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BENDER'S

SELECTED STATUTES

OF THE

STATE OF NEW YORK

AS AMENDED TO CLOSE OF THE LEGISLATIVE SESSION OF 1920, COMPRISING THE FOLLOWING CONSOLIDATED LAWS

1. DECEDENT ESTATE LAW
2. DOMESTIC RELATIONS LAW
3. LIEN LAW
4. NEGOTIABLE INSTRUMENTS LAW
5. PERSONAL PROPERTY LAW
6. REAL PROPERTY LAW

TOGETHER WITH

COMPLETE INDEXES, TABLES SHOWING DISPOSITION OF SECTIONS OF FORMER LAWS ON THESE SUBJECTS, CONSOLIDATORS' NOTES AND THE SOURCE OR DERIVATION OF THE VARIOUS SECTIONS OF THE NEW CONSOLIDATED LAWS

ELEVENTH EDITION

By JOHN T. FITZPATRICK, of the Albany Bar

ALBANY, N. Y.
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CONTENTS.

	Page
Decedent Estate Law:	
Consolidators' notes	3
Table showing provisions consolidated in this law	4
Article 1. Short title and definitions (§§ 1, 2)	7
2. Wills (§§ 10–48)	7
3. Descent and distribution (§§ 80–104)	21
4. Executors, administrators and testamentary trustees (§§ 110–122)	32
5. Action for causing death of decedent (§§ 130–134)	35a
6. Action by or against an executor or administrator; practice regulations (§§ 140–160)	35d
7. Action by creditor against debtor's next of kin, legatee or devisee (§§ 170–194)	35k
8. Action to establish a will or construe a devise (§§ 200–206)	35s
9. Receivers (§ 210)	35v
10. Laws repealed; when to take effect (§§ 250, 251)	36
Index to Decedent Estate Law	39
Domestic Relations Law:	
Consolidators' notes	49
Table showing disposition of sections of former law and provisions consolidated in new law	50
Article 1. Short title; definitions (§§ 1, 2)	53
2. Marriages (§§ 5–8)	53
3. Solemnization, proof and effect of marriage (§§ 10–25)	56
4. Certain rights and liabilities of husband and wife (§§ 50–60)	65
5. The custody and wages of children (§§ 70–72)	69
6. Guardians (§§ 80–88)	71
7. The adoption of children (§§ 110–118)	76
8. Apprentices and servants (§§ 120–127)	83
9. Laws repealed; when to take effect (§§ 140, 141)	88
Index to Domestic Relations Law	91
Lien Law:	
Consolidators' notes	99
Table showing disposition of sections of former law and provisions consolidated in new law	99
Article 1. Short title; definitions (§§ 1, 2)	101
2. Mechanics' liens (§§ 3–33)	103
3. Enforcement of liens on real property (§§ 40–64)	117
4. Liens on vessels and enforcement thereof (§§ 80–107)	124
5. Liens on monuments, gravestones and cemetery structures (§§ 120–124)	136
6. Liens for labor on stone (§§ 140–142)	139
7. Liens for service of stallions or bulls (§§ 160–163)	141
8. Other liens on personal property (§§ 180–187)	143
9. Enforcement of liens on personal property (§§ 200–210)	146
10. Chattel mortgages (§§ 230–238)	151
11. Laws repealed; when to take effect (§§ 250, 251)	156
Index to Lien Law	161

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Negotiable Instruments Law: PAGE

Note 171

ARTICLE 1. Short title; definitions (§§ 1, 2) 173
2. General provisions (§§ 3–7) 175
3. Form and interpretation (§§ 20–42) 176
4. Consideration (§§ 50–55) 183
5. Negotiation (§§ 60–80) 185
6. Rights of holder (§§ 90–98) 189
7. Liabilities of parties (§§ 110–119) 191
8. Presentment for payment (§§ 130–148) 194
9. Notice of dishonor (§§ 160–189) 198
10. Discharge (§§ 200–206) 204
11. Bills of exchange; form and interpretation (§§ 210–215) 207
12. Acceptance (§§ 220–230) 209
13. Presentment for acceptance (§§ 240–248) 212
14. Protest (§§ 260–268) 215
15. Acceptance for honor (§§ 280–289) 217
16. Payment for honor (§§ 300–306) 219
17. Bills in sets (§§ 310–315) 221
18. Promissory notes and checks (§§ 320–326) 223
19. Notes given for patent rights and for a speculative consideration (§§ 330–332) 225
20. Laws repealed; when to take effect 227

Index to Negotiable Instruments Law 229

Personal Property Law:

Consolidators' notes 243

Table showing disposition of sections of former law and provisions consolidated in new law 245

ARTICLE 1. Short title (§ 1) 247
2. Future estates; charitable uses; accumulation of income; trust estates (§§ 10–24) 247
3. Agreements in writing; without consideration; fraudulent; factors (§§ 30–45) 257
4. Contracts for the conditional sale of goods and chattels (§§ 60–67) 264
5. Sales of goods (§§ 82–158) 269a
6. Laws repealed; when to take effect (§§ 165, 166) 269ff
6. Transfers of shares of stock in corporations (§§ 162–185) 269ii
7. Bills of lading (§§ 187–241) 270

Index to Personal Property Law 272

Real Property Law:

Consolidators' notes 281

Table showing disposition of sections of former law and provisions consolidated in new law 290

ARTICLE 1. Short title; definitions (§§ 1, 2) 295
2. Tenure of real property (§§ 10–18) 296
3. Creation and division of estates (§§ 30–73) 299
4. Uses and trusts (§§ 90–117) 311
5. Powers (§§ 130–182) 326
6. Dower (§§ 190–207) 336
7. Landlord and tenant (§§ 220–232) 341
7a. Exemption of exhibits at international exhibits (§ 250) 270p
8. Conveyance and mortgages (§§ 240–275) 346

Digitized by Google

Real Property Law:—(Continued). PAGE

ARTICLE 9. Recording instruments affecting real property (§§ 290–335) 369
10. Discharge of ancient mortgages (§§ 340–344)..... 388
11. Quieting title of real property (§§ 360–366)..... 391
12. Registering title to real property (§§ 370–435)..... 394
13. Cemetery lands (§§ 450, 451)..... 435
14. Action for dower (§§ 460–491) 435a
15. Action to compel the determination of a claim to real property (§§ 500–512) 435l
16. Action for waste; other actions (§§ 520–536).....435r
17. Proceedings to foreclose a mortgage by advertisement (§§ 540–563) 435w
18. Proceedings to discover the death of a tenant for life (§§ 570–587) 435gg
19. Proceedings for voluntary partition of infant's or incompetent's real property (§§ 590–593) 435mm
20. Laws repealed; construction; when to take effect (§§ 600–602) 436

Index to Real Property Law..... 443

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DECEDENT ESTATE LAW.

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CONSOLIDATOR'S NOTES TO TEXT OF DECEDENT ESTATE LAW.

1.—Upon examining the revised statutes it was found that there were certain provisions relating to wills that had never been consolidated in any "General Law." They could not be assigned appropriately to any of the present general laws. They were substantive in character and there was an obvious objection to inserting them in the code which was already overburdened with provisions of a substantive nature. Some new "Consolidated Law" was therefore necessary. A "Wills Law" had been suggested, but this term, while adequate for the matter coming from the revised statutes was not broad enough to cover substantive provisions of a related character that should be removed from the code. The term "Decedent Estate Law" was selected therefore both as suggestive of the contents of the new law and general enough in its terms to include matter relating to wills as well as executors and administrators and kindred topics of a substantive character here assembled.

Throughout this chapter references in sections have been changed where necessary to preserve the original application of the sections as they existed in the Revised Statutes, the Code of Civil Procedure or in other statutes. The reason for every such change is seen at a glance and hence a separate note is not made in each instance.

2. Sec. 2.—Substantially the same definition of the word "will" is given in the Code of Civil Procedure, Sec. 2514, subd. 4, but, that is only for the purpose of construing the provisions of the code.

3. Art. 2.—Most of the provisions of this article come from the Revised Statutes with such provisions from the code as were found applicable. So far as possible the language of the Revised Statutes has been followed in incorporating its provisions in the Decedent Estate Law, so that the force of decisions of the courts upon any provision abstracted from the Revised Statutes might not be impaired. In some cases more apt language might be suggested, but for the reasons stated, no improvement in expression has been attempted. These remarks are also applicable to sections taken from the Code of Civil Procedure and inserted in this chapter.

4. Secs. 18-20.—These sections relate to the limitation on the power of persons to make devises or bequests to corporations created under certain acts heretofore passed. While under these acts no new corporations can be formed in the future the limitations should be noted as affecting gifts to corporations already existing. So far as these acts place a limitation upon the amount of property which can be taken by devise or bequest, they have been inserted in the Membership Corporations Law, as the portions so assigned relate solely to the powers of the corporations as distinguished from the power of the person making the will.

5. Art. 3.—This article embraces Art. 9 of the Real Property Law,

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known as the "Statute of Descents" and sections 2732-2734 of the Code of Civil Procedure, known as the "Statute of Distribution."

6. Secs. 96, 97 and 99.—These sections relating to advancements of real and personal estates are in pari materia and must be read together. See 79 N. Y. 246. The provisions of all three sections were taken from the Revised Statutes and inserted in the Real Property Law and the Code of Civil Procedure in former revisions of the statutes. Section 99 is by its terms inapplicable in a case where there is any real property of the intestate to descend to his heirs.

7. Art. 4.—There are many matters of a more or less substantive character relating to executors and administrators, trustees and appraisers in the Code of Civil Procedure which might have been inserted under this article. It has been deemed best, however, to leave these matters in the Code of Civil Procedure until such time as the Code shall be revised. When that time arrives these provisions can be readily assigned to this article.

8. Sec. 111.—This provision is found in section 9 of the Personal Property Law and for greater convenience in reference has been transferred to the Decedent Estate Law. The reference to guardians has been transferred to Domestic Relations Law. The portion of the section relating to trustees generally has been allowed to remain in the Personal Property Law.

TABLE.

Showing the Provisions of the Revised Statutes, Session Laws, Real Property Law and Code of Civil Procedure which are Consolidated in the Decedent Estate Law.

Sections, etc., of Revised Statutes, etc.	Sections of Consol. Law.
R. S. pt. 2, Ch. 6, Tit. 1:	
Art. 1, Sec. 1	10
" 2	11
" 3	12
" 4	13
" 2, " 5	14
" 21	15
" 22	16
" 3, " 40	21
" 41	22
" 42	34
" 43	35
" 44	36
" 45	37
" 46	38
" 47	39
" 48	40
" 49	26
" 50-51	27
" 52	29
" 53	41
" 71	2

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Sections, etc., of Revised Statutes, etc.	Sections of Consol. Law.
R. S. pt. 2, ch. 6, Tit. 5:	
Sec. 1	113
" 2	116
" 3	117
" 4	118
" 5	119
" 6	114
R. S. pt. 3, Ch. 7, Tit. 3:	
Art. 7, Sec. 67	30
" 68	31
" 69	32
" 70	33
R. S. pt. 3, Ch. 8, Tit. 3:	
Art. 1, Sec. 17	112
" 18	115
L. 1848, Ch. 319, Sec. 6 pt.	19
L. 1860, " 360, " 1	17
L. 1865, " 368, " 6 pt.	18
L. 1873, " 397, " 5 pt.	20
L. 1875, " 267, " 7 pt.	18
L. 1875, " 343, " 5 pt.	18
L. 1883, " 65, " 1	110
L. 1886, " 236, " 7 pt.	18
L. 1887, " 315, " 5 pt.	20
L. 1887, " 317, " 7 pt.	20
L. 1890, " 286, " 6 pt.	20
L. 1891, " 34, " 1	122
L. 1896, " 547, (Real Property Law)	
L. 1897, " 417, " 9 pt.	111
L. 1905, " 539, " 2	98
Real Property Law Sec. 280	80
" 281	81
" 282	82
" 283	83
" 284	84
" 285	85
" 286	86
" 287	87
" 288	88
" 289	89
" 290	90
" 290a	91
" 291	92
" 292	93
" 293	94
" 294	95
" 295	96
" 296	97

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Sections, etc., of Revised Statutes, etc.	Sections of Consol. Law.
Code Civ. Pro. Sec. 1843	101
" 1859	102
" 1868	28
" 2611 pt.	23
" 2611 pt.	24
" 2611 pt.	25
" 2628	46
" 2633	42
" 2634, pt.	43
" 2660, pt.	103
" 2694	47
" 2703	44
" 2704	45
" 2732	98
" 2733, pt.	99
" 2734	100

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DECEDENT ESTATE LAW.

(L. 1909, CHAP. 18, BEING CHAP. 13 OF THE CONSOLIDATED LAWS. IN EFFECT FEB. 17, 1909.)

ARTICLE 1. Short title and definitions (§§ 1, 2).
2. Wills (§§ 10–48).
3. Descent and distribution (§§ 80–104).
4. Executors, administrators and testamentary trustees (§§ 110–122).
5. Laws repealed; when to take effect (§§ 130, 131).

ARTICLE 1.

SHORT TITLE AND DEFINITIONS.

SECTION 1. Short title.
2. Definitions.

§ 1. Short title.

This chapter shall be known as the "Decedent Estate Law."

§ 2. Definitions.

The term "will," as used in this chapter, shall include all codicils as well as wills.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 71.

ARTICLE 2.

WILLS.

SECTION 10. Who may devise.
11. What real property may be devised.
12. Who may take real property by devise.
13. Devises of real property to aliens. [Repealed.]
14. Wills of real estate, how construed.
15. Who may make wills of personal estate.
16. Unwritten wills of personal property, when allowed.
17. Devise or bequest to certain societies, associations and corporations.
18. Devise or bequest to certain corporations. [Repealed.]
19. Devise or bequest to certain benevolent charitable and scientific corporations. [Repealed.]
20. Devise or bequest to certain bar associations, veterinary associations and fire corporations. [Repealed.]
21. Manner of execution of will.

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SECTION 22. Witnesses to will to write names and places of residence.
22a. Validity of will executed without the state.
23. What wills may be proved.
24. Effect of change of residence since execution of will.
25. Application of certain provisions to wills previously made.
26. Child born after making of will.
27. Devise or bequest to subscribing witness.
28. Action by child born after making of will, or by subscribing witness.
29. Devise or bequest to child or descendant, or to a brother or sister of the testator not to lapse.
30. Reception of wills for safe keeping.
31. Sealing and indorsing wills received for safe keeping.
32. Delivery of wills received for safe keeping.
33. Opening wills received by surrogate for safe keeping.
34. Revocation and cancellation of written wills.
35. Revocation by marriage.
36. Will of unmarried woman. [Repealed.]
37. Bond or agreement to convey property devised or bequeathed not a revocation.
38. Charge or incumbrance not a revocation.
39. Conveyance, when not to be deemed a revocation.
40. Conveyance, when to be deemed a revocation.
41. Canceling or revocation of second will not to revive first.
42. Record of wills in county clerk's office.
43. County Clerk's index of recorded wills.
44. Recording will proved in another state or foreign country.
45. Authentication of papers from another state or foreign country for use in this state.
46. Validity of purchase notwithstanding devise.
47. Validity and effect of testamentary dispositions.
48. Application of certain sections in this article.

§ 10. Who may devise.

All persons, except idiots, persons of unsound mind and infants, may devise their real estate, by a last will and testament, duly executed, according to the provisions of this article.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 1, § 1, as amended by L. 1867, ch. 782, § 3.

§ 11. What real property may be devised.

Every estate and interest in real property descendible to heirs, may be so devised.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 1, § 2.

§ 12. Who may take real property by devise.

Such a devise of real property may be made to every person capable by law of holding real estate; but no devise to a corporation shall be valid, unless such corporation be expressly authorized by its charter, or by statute, to take by devise.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 1, § 3.

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§ 13. Devises of real property to aliens.

[Repealed by L. 1913, ch. 153, in effect Apr. 1, 1913.]

§ 14. Wills of real estate, how construed.

Every will that shall be made by a testator, in express terms, of all his real estate, or in any other terms denoting his intent to devise all his real property, shall be construed to pass all the real estate, which he was entitled to devise, at the time of his death.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 2, § 5.

§ 15. Who may make wills of personal estate.

Every male person of the age of eighteen years or upwards, and every female of the age of sixteen years or upwards, of sound mind and memory, and no others, may give and bequeath his or her personal estate, by will in writing.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 2, § 21, as amended by L. 1867, ch. 782, § 4.

§ 16. Unwritten wills of personal property, when allowed.

No nuncupative or unwritten will, bequeathing personal estate, shall be valid, unless made by a soldier while in actual military service, or by a mariner, while at sea.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 2, § 22.

§ 17. Devise or bequest to certain societies, associations and corporations.

No person having a husband, wife, child or parent, shall, by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation, in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one-half, and no more.

Derivation: L. 1860, ch. 360, § 1.

§ 18. Devise or bequest to certain corporations.

[Repealed by L. 1911, ch. 857, in effect July 29, 1911.]

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§ 19. Devise or bequest to certain benevolent, charitable and scientific corporations.

[Repealed by L. 1911, ch. 857, in effect July 29, 1911.]

§ 20. Devise or bequest to certain bar associations, veterinary associations and fire corporations.

[Repealed by L. 1911, ch. 857, in effect July 29, 1911.]

§ 21. Manner of execution of will.

Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

1. It shall be subscribed by the testator at the end of the will.

2. Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the attesting witnesses.

3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament.

4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 40.

§ 22. Witnesses to will to write names and places of residence.

The witnesses to any will, shall write opposite to their names their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions, shall forfeit fifty dollars, to be recovered by any person interested in the property devised

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or bequeathed, who will sue for the same. Such omission shall not affect the validity of any will; nor shall any person liable to the penalty aforesaid, be excused or incapacitated on that account, from testifying respecting the execution of such will.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 41.

§ 22a. Validity of wills executed without the state.

A will executed without this state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, shall be deemed to be legally executed, and shall be of the same force and effect as if executed in the mode prescribed by the laws of this state, provided, such will is in writing and subscribed by the testator. (Added by L. 1919, ch. 294, in effect May 3, 1919.)

§ 23. What wills may be proved.

A will of real or personal property, executed as prescribed by the laws of the state, or a will of real or personal property executed without the state in the mode prescribed by the law, either of the place where executed or of the testator's domicile, provided such will is in writing and subscribed by the testator, may be admitted to probate in this state. (Amended by L. 1919, ch. 294, in effect May 3, 1919.)

Derivation: Code Civil Procedure, § 2611. For remainder of section, see this chapter, §§ 24, 25.

§ 24. Effect of change of residence since execution of will.

The right to have a will admitted to probate, the validity of the execution thereof, or the validity or construction of any provision contained therein, is not affected by a change of the testator's residence made since the execution of the will.

Derivation: Code Civil Procedure, § 2611. For remainder of section, see this chapter, §§ 23, 25.

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§ 25. Application of certain provisions to wills previously made.

The last two sections apply only to a will executed by a person dying after April eleventh, eighteen hundred and seventy-six, and they do not invalidate a will executed before that date, which would have been valid but for the enactment of sections one and two of chapter one hundred and eighteen of the laws of eighteen hundred and seventy-six, except where such a will is revoked or altered, by a will which those sections rendered valid, or capable of being proved as prescribed in article first of title third of chapter eighteen of the code of civil procedure.

Derivation: Code Civil Procedure, § 2611. For remainder of section, see this chapter, §§ 23, 24.

§ 26. Child born after making of will.

Whenever a testator shall have a child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child, so after-born, unprovided for by any settlement, and neither provided for, nor in any way mentioned in such will, every such child shall succeed to the same portion of such parent's real and personal estate, as would have descended or been distributed to such child, if such parent had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to and out of the parts devised and bequeathed to them by such will.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 49, as amended by L. 1869, ch. 22, § 1.

§ 27. Devise or bequest to subscribing witness.

If any person shall be a subscribing witness to the execution of any will, wherein any beneficial devise, legacy, interest or appointment of any real or personal estate shall be made to such witness, and such will cannot be proved without the testimony of such witness, the said devise, legacy, interest or appointment shall be void, so far only as concerns such witness, or any claiming under him; and such person shall be a competent witness, and compellable to testify respecting the execution of the said will, in like manner as if no such devise or bequest had been made.

But if such witness would have been entitled to any share of the testator's estate, in case the will was not established, then so much of the share that would have descended, or have been distributed to such witness, shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will, in

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proportion to, and out of, the parts devised and bequeathed to them.

Derivation: R. S., Prt 2, ch. 6, Tit. 1, Art. 3, §§ 50, 51.

§ 28. Action by child born after making of will, or by subscribing witness.

A child, born after the making of a will, who is entitled to succeed to a part of the real or personal property of the testator, or a subscribing witness to a will, who is entitled to succeed to a share of such property, may maintain an action against the legatees or devisees, as the case requires, to recover his share of the property; and he is subject to the same liabilities, and has the same rights, and is entitled to the same remedies, to compel a distribution or partition of the property, or a contribution from other persons interested in the estate, or to gain possession of the property, as any other person who is so entitled to succeed.

Derivation: Code Civil Procedure, § 1868.

§ 29. Devise or bequest to child or descendant, or to a brother or sister of the testator not to lapse.

Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, or to a brother or sister of the testator, and such legatee or devisee shall die during the lifetime of the testator, leaving a child or other descendant who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate. (Amended by L. 1912, ch. 384, in effect May 5, 1912.)

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 52.

§ 30. Reception of wills for safe keeping.

The clerk of every county in this state, the register of deeds in the city and county of New York, and the surrogate of every county, upon being paid the fees allowed therefor by law, shall receive and deposit in their offices respectively, any last will or testament which any person shall deliver to them for that purpose, and shall give a written receipt therefor to the person depositing the same.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 67.

§ 31. Sealing and indorsing wills received for safe keeping.

Such will shall be inclosed in a sealed wrapper, so that the contents thereof cannot be read, and shall have indorsed thereon the name of the testator, his place of residence, and the day, month and year when delivered; and shall not, on any pretext whatever, be

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opened, read or examined, until delivered to a person entitled to the same, as hereinafter directed.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 68.

§ 32. Delivery of wills received for safe keeping.

Such will shall be delivered only,

1. To the testator in person; or,

2. Upon his written order, duly proved by the oath of a subscribing witness; or,

3. After his death to the persons named in the indorsement on the wrapper of such will, if any such indorsement be made thereon; or,

4. If there be no such indorsement, and if the same shall have been deposited with any other officer than a surrogate, then to the surrogate of the county.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art 7, § 69.

§ 33. Opening wills received by surrogate for safe keeping.

If such will shall have been deposited with a surrogate, or shall have been delivered to him as above prescribed, such surrogate, after the death of the testator, shall publicly open and examine the same, and make known the contents thereof, and shall file the same in his office, there to remain until it shall have been duly proved, if capable of proof, and then to be delivered to the person entitled to the custody thereof; or until required by the authority of some competent court to produce the same in such court.

Derivation: R. S., Part 3, ch. 7, Tit. 3, Art. 7, § 70.

§ 34. Revocation and cancellation of written wills.

No will in writing, except in the cases hereinafter mentioned, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator, and the fact of such injury or destruction, shall be proved by at least two witnesses.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 42.

§ 35. Revocation by marriage.

If after making any will, such testator marries, and the husband

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or wife, or any issue of such marriage, survives the testator, such will shall be deemed revoked as to them, unless provision shall have been made for them by some settlement, or they shall be provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and such surviving husband or wife, and the issue of such marriage, shall be entitled to the same rights in, and to the same share or portion of the estate of said testator as they would have been, if such will had not been made. No evidence to rebut such presumption of revocation shall be received, except as herein provided. (Amended by L. 1919, ch. 293, in effect Sept. 1, 1919.)

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 43.

§ 36. Will of unmarried woman.

(Repealed by L. 1919, ch. 293, in effect Sept. 1, 1919.)

§ 37. Bond or agreement to convey property devised or bequeathed not a revocation.

A bond, agreement, or covenant, made for a valuable consideration, by a testator, to convey any property devised or bequeathed in any will previously made, shall not be deemed a revocation of such previous devise or bequest, either at law or in equity; but such property shall pass by the devise or bequest, subject to the same remedies on such bond, agreement or covenant, for a specific performance or otherwise, against the devisees or legatees, as might be had by law against the heirs of the testator, or his next of kin, if the same had descended to them.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 45.

§ 38. Charge or incumbrance not a revocation.

A charge or incumbrance upon any real or personal estate, for the purpose of securing the payment of money, or the performance of any covenant, shall not be deemed a revocation of any will relating to the same estate, previously executed; but the devises and legacies therein contained, shall pass and take effect, subject to such charge or incumbrance.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 46.

§ 39. Conveyance, when not to be deemed a revocation.

A conveyance, settlement, deed, or other act of a testator, by which his estate or interest in property, previously devised or bequeathed by him, shall be altered, but not wholly divested, shall not be deemed a revocation of the devise or bequest of such property; but such devise or bequest shall pass to the devisee or legatee,

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the actual estate or interest of the testator, which would otherwise descend to his heirs, or pass to his next of kin; unless in the instrument by which such alteration is made, the intention is declared, that it shall operate as a revocation of such previous devise or bequest.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 47.

§ 40. Conveyance, when to be deemed a revocation.

But if the provisions of the instrument by which such alteration is made, are wholly inconsistent with the terms and nature of such previous devise or bequest, such instrument shall operate as a revocation thereof, unless such provisions depend on a condition or contingency, and such condition be not performed, or such contingency do not happen.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 48.

§ 41. Canceling or revocation of second will not to revive first.

If, after the making of any will, the testator shall duly make and execute a second will, the destruction, canceling or revocation of such second will, shall not revive the first will, unless it appear by the terms of such revocation, that it was his intention to revive and give effect to his first will; or unless after such destruction, canceling or revocation, he shall duly republish his first will.

Derivation: R. S., Part 2, ch. 6, Tit. 1, Art. 3, § 53.

§ 42. Record of wills in county clerk's office.

A will of real property, which has been, at any time, either before or after this chapter takes effect duly proved in the supreme court, or the court of chancery, or before a surrogate of the state with the certificate of proof thereof annexed thereto, or indorsed thereon, or an exemplified copy thereof, may be recorded in the office of the clerk or the register, as the case requires, of any county in the state, in the same manner as a deed of real property. Where the will relates to real property, the executor or administrator, with the will annexed, must cause the same, or an exemplified copy thereof, to be so recorded, in each county where real property of the testator is situated, within twenty days after letters are issued to him. An exemplification of the record of such a will, from any surrogate's or other office where the same has been so recorded, either before or after this chapter takes effect, may be in like manner recorded in the office of the clerk or register of any county. Such a record or exemplification, or an exemplification of the record

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thereof, must be received in evidence, as if the original will was produced and proved.

Derivation: Code Civil Procedure, § 2633.

§ 43. County clerk's index of recorded wills.

Upon recording a will or exemplification, as prescribed in the last section, the clerk or register must index it in the same books, and substantially in the same manner, as if it was a deed recorded in his office.

Derivation: Code Civil Procedure, § 2634. For remainder of section, see Code Civil Procedure, § 2634.

§ 44. Recording will proved in another state or foreign country.

Where real property situated within this state, or an interest therein, is devised or made subject to a power of disposition by a will duly executed in conformity with the laws of this state, of a person who was at the time of his, or her death, a resident elsewhere within the United States, or in a foreign country, and such will has been admitted to probate within the state or territory, or foreign country, where the decedent so resided, and is filed or recorded in the proper office as prescribed by the laws of that state or territory or foreign country, a copy of such will or of the record thereof and of the proofs or of the records thereof, or if the proofs are not on file or recorded in such office, of any statement, on file or recorded in such office, of the substance of the proofs, authenticated as prescribed in section forty-five of this chapter, or if no proofs and no statement of the substance of the proofs be on file or recorded in such office, a copy of such will or of the record thereof, authenticated as prescribed in said section forty-five, accompanied by a certificate that no proofs or statement of the substance of proof of such will, are or is on file or recorded in such office, made and likewise authenticated as prescribed in said section forty-five, may be recorded in the office of the surrogate of any county in this state where such real property is situated; and such record in the office of such surrogate or an exemplified copy thereof shall be presumptive evidence of such will and of the execution thereof, in any action or special proceeding relating to such real property.

Derivation: Code Civil Procedure, § 2703. Amended by L. 1909, ch. 240, § 13, in effect April 22, 1909.

§ 45. Authentication of papers from another state or foreign country for use in this state.

To entitle a copy of a will admitted to probate or of letters

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testamentary or of letters of administration, granted in any other state or in any territory of the United States, and of the proofs or of any statement of the substance of the proofs of any such will, or of the record of any such will, letters, proofs or statement, to be recorded or used in this state as provided in article seventh of title third of chapter eighteenth of the code of civil procedure or in section forty-four of this chapter, such copy must be authenticated by the seal of the court or officer by which or whom such will was admitted to probate or such letters were granted, or having the custody of the same or of the record thereof, and the signature of a judge of such court or the signature of such officer and of the clerk of such court or officer if any; and must be further authenticated by a certificate under the great or principal seal of such state or territory, and the signature of the officer who has the custody of such seal, to the effect that the court or officer by which or whom such will was admitted to probate or such letters were granted, was duly authorized by the laws of such state or territory to admit wills to probate or to grant letters testamentary or of administration and to keep the same and records thereof; that the seal of such court or officer affixed to such copy is genuine, and that the officer making such certificate under such seal of such state or territory verily believes that each of the signatures attesting such copy is genuine; and to entitle any certificate concerning proofs accompanying the copy of the will or of the record so authenticated, to be recorded or used in this state, as provided in said article or section, such certificate must be under the seal of the court or officer by which or whom such will was admitted to probate, or having the custody of such will or record, and the signature of a judge or the clerk of such court, or the signature of such officer, authenticated by a certificate under such great or principal seal of such state or territory, and the signature of the officer having the custody thereof, to the effect that the seal of the court or officer affixed to such certificate concerning proofs is genuine, and that such officer making such certificate under such seal of such state or territory, verily believes that the signature to such certificate concerning proofs is genuine. To entitle a copy of a will admitted to probate or of letters testamentary, or of letters of administration, granted in a foreign country, and of the proofs or of any statement of the substance of the proofs of any such will, or of the record of any such will, letters, proofs or statement, to be recorded or used in this state,

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as provided in said article or section, such copy must be authenticated in the manner prescribed by the laws of such foreign country, and must be further authenticated by a certificate of a judge of a court of record or by the chief officer of the department of justice of such foreign country to the effect that such authentication is in conformity with the laws of such foreign country, and that the court or officer by which or by whom such will was so admitted to probate, or such letters were granted, was duly authorized by the laws of such foreign country to admit wills to probate, or to grant letters testamentary or of administration, and to keep the same and records thereof; and the signature and official character of such judge or court of record or of such chief officer of the department of justice shall be attested by a consular officer of the United States, resident in such foreign country, under the seal of his office; and to entitle any certificate concerning proofs accompanying the copy of the will or of the records so authenticated, to be used and recorded in this state, as provided in said article or section, such certificate concerning the proofs must be similarly authenticated and attested.

Derivation: Code Civil Procedure, § 2704. Amended by L. 1909, ch. 340, in effect September 1, 1909.

§ 46. Validity of purchase notwithstanding devise.

The title of a purchaser in good faith and for a valuable consideration, from the heir of a person who died seized of real property, shall not be affected by a devise of the property made by the latter, unless within four years after the testator's death, the will devising the same is either admitted to probate and recorded as a will of real property in the office of the surrogate having jurisdiction, or established by the final judgment of a court of competent jurisdiction of the state, in an action brought for that purpose. But if, at the time of the testator's death, the devisee is either within the age of twenty-one years, or insane, or imprisoned on a criminal charge, or in execution upon conviction of a criminal offense, for a term less than for life; or without the state; or, if the will was concealed by one or more of the heirs of the testator, the limitation created by this section does not begin until after the expiration of one year from the removal of such a disability, or the delivery of the will to the devisee or his representative, or to the proper surrogate.

Derivation: Code Civil Procedure, § 2628.

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§ 47. Validity and effect of testamentary dispositions.

The validity and effect of a testamentary disposition of real property, situated within the state, or of an interest in real property so situated, which would descend to the heir of an intestate, and the manner in which such property or such an interest descends, where it is not disposed of by will, are regulated by the laws of the state, without regard to the residence of the decedent. Except where special provision is otherwise made by law, the validity and effect of a testamentary disposition of any other property situated within the state, and the ownership and disposition of such property, where it is not disposed of by will, are regulated by the laws of the state or country, of which the decedent was a resident, at the time of his death. Whenever a decedent, being a citizen of the United States or a citizen or a subject of a foreign country, wherever resident, shall have declared in his will and testament that he elects that such testamentary disposition shall be construed and regulated by the laws of this state, the validity and effect of such depositions shall be determined by such laws. (Amended by L. 1911, ch. 244; L. 1918, ch. 186, in effect April 11, 1918.)

Derivation: Code Civil Procedure, § 2694.

§ 48. Application of certain sections in this article.

Section twenty-five hundred and fourteen of the code of civil procedure is applicable to the provisions of sections twenty-three to twenty-five, both inclusive, and sections forty-two to forty-seven, both inclusive, of this chapter.

Added by L. 1909, ch. 240, § 16, in effect April 22, 1909.

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ARTICLE 3.

DESCENT AND DISTRIBUTION.

SECTION
80. Definitions and use of terms; effect of article.
81. General rule of descent.
82. Lineal descendants of equal degree.
83. Lineal descendants of unequal degree.
84. When father inherits.
85. When mother inherits.
86. When collateral relatives inherit; collateral relatives of equal degree.
87. Brothers and sisters and their descendants.
88. Brothers and sisters of father and mother and their descendants and grandparents.
89. Illegitimate children.
90. Relatives of the half-blood.
91. Relatives of husband or wife.
92. Cases not hereinbefore provided for.
93. Posthumous children and relatives.
94 Inheritance, sole or in common.
95. Alienism of ancestor.
96. Advancements of real and personal estates.
97. How advancement adjusted.
98. Distribution of personal property of decedent.
99. Advancements of personal estates.
100. Estates of married women.
101. Liability of heirs and devisees for funeral expenses and debt of decedent. [Repealed.]
102. Liability of heir or devisee not affected where will makes specific provision for payment of debt. [repealed.]
103. Action against husband for debts of deceased wife.
104. Application of certain sections in this article.

§ 80. Definitions and use of terms; effect of article.

1. The term "real property" as used in this article, includes every estate, interest and right, legal and equitable, in lands, tenements and hereditaments, except such as are determined or extinguished by the death of an intestate, seized or possessed thereof, or in any manner entitled thereto; leases for years, estates for the life of another person; and real property held in trust, not devised by the beneficiary. "Inheritance" means real property as herein defined, descended according to the provisions of this article.

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2. The expressions "Where the inheritance shall have come to the intestate on the part of the father" or "mother," as the case may be, include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.

3. When in this article a person is described as "living," it means living at the time of the death of the intestate from whom the descent came; when he is described as having "died," it means that he died before such intestate.

4. This article does not affect a limitation of an estate by deed or will, or tenancy by the courtesy or dower.

Derivation: Real Property Law, L. 1896, ch. 547, § 280.

§ 81. General rule of descent.

The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants.
2. To his father.
3. To his mother; and
4. To his collateral relatives, as prescribed in the following sections of this article.

Derivation: Real Property Law, L. 1896, ch. 547, § 281.

§ 82. Lineal descendants of equal degree.

If the intestate leave descendants in the direct line of lineal descent, all of equal degree of consanguinity to him, the inheritance shall descend to them in equal parts however remote from him the common degree of consanguinity may be.

Derivation: Real Property Law, L. 1896, ch. 547, § 282.

§ 83. Lineal descendants of unequal degree.

If any of the descendants of such intestate be living, and any be dead, the inheritance shall descend to the living, and the descendants of the dead, so that each living descendant shall inherit such share as would have descended to him had all the descendants in the same degree of consanguinity who shall have died leaving issue been living; and so that issue of the descendants who shall have died shall respectively take the shares which their ancestors would have received.

Derivation: Real Property Law, L. 1896, ch. 547, § 283.

§ 84. When father inherits.

If the intestate die without lawful descendants, and leave a father, the inheritance shall go to such father, unless the inheritance

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came to the intestate on the part of his mother, and she be living; if she be dead, the inheritance descending on her part shall go to the father for life, and the reversion to the brothers and sisters of the intestate and their descendants, according to the law of inheritance by collateral relatives hereinafter provided; if there be no such brothers or sisters or their descendants living, such inheritance shall descend to the father in fee.

Derivation: Real Property Law, L. 1896, ch. 547, § 284.

§ 85. When mother inherits.

If the intestate die without descendants and leave no father, or leave a father not entitled to take the inheritance under the last section, and leave a mother, and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead, according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

Derivation: Real Property Law, L. 1896, ch. 547, § 285.

§ 86. When collateral relatives inherit; collateral relatives of equal degree.

If there be no father or mother capable of inheriting the estate, it shall descend in the cases hereinafter specified to the collateral relatives of the intestate; and if there be several such relatives, all of equal degree of consanguinity to the intestate, the inheritance shall descend to them in equal parts, however remote from him the common degree of consanguinity may be.

Derivation: Real Property Law, L. 1896, ch. 547, § 286.

§ 87. Brothers and sisters and their descendants.

If all the brothers and sisters of the intestate be living, the inheritance shall descend to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants, in whatever degree, of those dead; so that each living brother or sister shall inherit such share as would have descended to him or her if all the brothers and sisters of the intestate who shall have died, leaving issue, had been living, and so that such descendants in whatever degree shall collectively inherit the share which their parent would have received if living; and the same rule shall prevail as to

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all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

Derivation: Real Property Law, L. 1896, ch. 547, § 287.

§ 88. Brothers and sisters of father and mother and their descendants and grandparents.

If there be no heir entitled to take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of the father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living.

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants. But, if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner. In all cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner as if they had been the brothers and sisters of the intestate.

5. If there be no such brothers or sisters of such father or mother, nor any descendants of such brothers or sisters, the inheritance, if it shall have come to the intestate on the part of his father, shall descend to his father's parents, then living, in equal parts, and if they be dead, then to his mother's parents, then living, in equal parts; but if the inheritance shall have come to the intestate on the part of his mother, it shall descend to his mother's parents, then living, in equal parts, and if they be dead, to his father's parents, then living, in equal parts. If the inheritance

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has not come to the intestate on the part of either father or mother, it shall descend to his living grandparents in equal parts.

Derivation: Real Property Law, L. 1896, ch. 547, § 288, as amended by L. 1904, ch. 106, § 1.

§ 89. Illegitimate children.

If an intestate who shall have been illegitimate die without lawful issue, or illegitimate issue entitled to take, under this section, the inheritance shall descend to his mother; if she be dead, to his relatives on her part, as if he had been legitimate. If a woman die without lawful issue, leaving an illegitimate child, the inheritance shall descend to him as if he were legitimate. In any other case illegitimate children or relatives shall not inherit.

Derivation: Real Property Law, L. 1896, ch. 547, § 289.

§ 90. Relatives of the half-blood.

Relatives of the half-blood and their descendants, shall inherit equally with those of the whole blood and their descendants, in the same degree, unless the inheritance came to the intestate by descent, devise or gift from an ancestor; in which case all those who are not of the blood of such ancestor shall be excluded from such inheritance.

Derivation: Real Property Law, L. 1896, ch. 547, § 290.

§ 91. Relatives of husband or wife.

When the inheritance shall have come to the intestate from a deceased husband or wife, as the case may be, and there be no person entitled to inherit under any of the preceding sections, then such real property of such intestate shall descend to the heirs of such deceased husband or wife, as the case may be, and the persons entitled, under the provisions of this section, to inherit such real property, shall be deemed to be the heirs of such intestate.

Derivation: Real Property Law, L. 1896, ch. 547, § 290a, as added by L. 1901, ch. 481, § 1.

§ 92. Cases not hereinbefore provided for.

In all cases not provided for by the preceding sections of this article, the inheritance shall descend according to the course of the common law.

Derivation: Real Property Law, L. 1896, ch. 547, § 291.

§ 93. Posthumous children and relatives.

A descendant or a relative of the intestate begotten before his death, but born thereafter, shall inherit in the same manner as if

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he had been born in the lifetime of the intestate and had survived him.

Derivation: Real Property Law, L. 1896, ch. 547, § 292.

§ 94. Inheritance, sole or in common.

When there is but one person entitled to inherit, he shall take and hold the inheritance solely; when an inheritance or a share of an inheritance descends to several persons they shall take as tenants in common, in proportion to their respective rights.

Derivation: Real Property Law, L. 1896, ch. 547, § 293.

§ 95. Alienism of ancestor.

A person capable of inheriting under the provisions of this article, shall not be precluded from such inheritance by reason of the alienism of an ancestor.

Derivation: Real Property Law, L. 1896, ch. 547, § 294.

§ 96. Advancements of real and personal estates.

If a child of an intestate shall have been advanced by him, by settlement or portion, real or personal property, the value thereof must be reckoned for the purposes of descent and distribution as part of the real and personal property of the intestate descendible to his heirs and to be distributed to his next of kin; and if such advancement be equal to or greater than the amount of the share which such child would be entitled to receive of the estate of the deceased, such child and his descendants shall not share in the estate of the intestate; but if it be less than such share, such child and his descendants shall receive so much, only, of the personal property, and inherit so much only, of the real property, of the intestate, as shall be sufficient to make all the shares of all the children in the whole property, including the advancement, equal. The value of any real or personal property so advanced, shall be deemed to be that, if any, which was acknowledged by the child by an instrument in writing; otherwise it must be estimated according to the worth of the property when given. Maintaining or educating a child, or giving him money without a view to a portion or settlement in life is not an advancement. An estate or interest given by a parent to a descendant by virtue of a beneficial power, or of a power in trust with a right of selection, is an advancement.

Derivation: Real Property Law, L. 1896, ch. 547, § 295.

§ 97. How advancement adjusted.

When an advancement to be adjusted consisted of real property, the adjustment must be made out of the real property descendible

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to the heirs. When it consisted of personal property, the adjustment must be made out of the surplus of the personal property to be distributed to the next of kin. If either species of property is insufficient to enable the adjustment to be fully made, the deficiency must be adjusted out of the other.

Derivation: Real Property Law, L. 1896, ch. 547, § 296.

§ 98. Distribution of personal property of decedent.

If the deceased died intestate, the surplus of his personal property after payment of debts; and if he left a will, such surplus, after the payment of debts and legacies, if not bequeathed, must be distributed to his widow, children, or next of kin, in manner following:

1. One-third part to the widow, and the residue in equal portions among the children, and such persons as legally represent the children if any of them have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one-half of the whole surplus shall be allotted to the widow, and the other half distributed to the next of kin of the deceased, entitled under the provisions of this section.

3. If the deceased leaves a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to one-half of the surplus as above provided, and to the whole of the residue if it does not exceed two thousand dollars; if the residue exceeds that sum, she shall receive in addition to the one-half, two thousand dollars; and the remainder shall be distributed to the brothers and sisters and their representatives.

4. If there be no widow, the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. If there be no widow, and no children, and no representatives of a child, the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives; and if all the brothers and sisters of the intestate be living, the whole surplus shall be distributed to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants in whatever degree of those dead; so that to each living brother or sister shall be distributed such share as would have been distributed to him or her if all the brothers and sisters of the intes-

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tate who shall have died leaving issue had been living, and so that there shall be distributed to such descendants in whatever degree, collectively, the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother and sister of the intestate whenever such descendants are of unequal degrees.

6. If the deceased leave no children and no representatives of them, and no father, and leave a widow and a mother, the half not distributed to the widow shall be distributed in equal shares to his mother and brothers and sisters, or the representatives of such brothers and sisters; and if there be no widow, the whole surplus shall be distributed in like manner to the mother, and to the brothers and sisters, or the representatives of such brothers and sisters.

7. If the deceased leave a father and no child or descendant, the father shall take one-half if there be a widow, and the whole, if there be no widow.

8. If the deceased leave a mother, and no child, descendant, father, brother, sister, or representative of a brother or sister, the mother, if there be a widow, shall take one-half; and the whole, if there be no widow.

9. If the deceased was illegitimate and leave a mother, and no child, or descendant, or widow, such mother shall take the whole and shall be entitled to letters of administration in exclusion of all other persons. If the mother of such deceased be dead, the relatives of the deceased on the part of the mother shall take in the same manner as if the deceased had been legitimate, and be entitled to letters of administration in the same order.

10. Where the descendants, or next of kin of the deceased, entitled to share in his estate, are all in equal degree to the deceased, their shares shall be equal.

11. When such descendants or next of kin are of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks; so that those who take in their own rights shall receive equal shares, and those who take by representation shall receive the share to which the parent whom they represent, if living, would have been entitled.

12. No representation shall be admitted among collaterals after brothers and sisters descendants. This subdivision shall not ap-

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ply to the estate of a decedent who shall have died prior to May eighteenth, nineteen hundred and five.

13. Relatives of the half-blood shall take equally with those of the whole blood in the same degree; and the representatives of such relatives shall take in the same manner as the representatives of the whole blood.

14. Descendants and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same manner as if they had been born in the lifetime of the deceased, and had survived him.

15. If a woman die, leaving illegitimate children, and no lawful issue, such children inherit her personal property as if legitimate.

15-a. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, then the whole surplus shall be allotted to a surviving child of the husband or wife of the deceased, or if there be more than one, it shall be distributed equally among them. (This subdivision added by L. 1913, ch. 489, in effect May 14, 1913.)

16. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, and no child or children of the husband or wife of the deceased, then the whole surplus shall be distributed equally to and among the next of kin of the husband or wife of the deceased, as the case may be, and such next of kin shall be deemed next of kin of the deceased for all the purposes specified in this article or in chapter eighteen of the code of civil procedure; but such surplus shall not, and shall not be construed to, embrace any personal property except such as was received by the deceased from such husband or wife, as the case may be, by will or by virtue of the laws relating to the distribution of the personal property of the deceased person. (Amended by L. 1913, ch. 489, in effect May 14, 1913.)

Derivation: Code Civil Procedure, § 2732. Second sentence in subd. 12, is L. 1905, ch. 539, § 2, as amended by L. 1909, ch. 240, § 14, in effect April 22, 1909.

§ 99. Advancements of personal estates.

If any child of such deceased person have been advanced by the deceased, by settlement or portion of real or personal property, the value thereof shall be reckoned with that part of the surplus of the personal property, which remains to be distributed among the children; and if such advancement be equal or superior to the amount, which, according to the preceding section, would be distributed to such child, as his share of such surplus and advancement, such child and his descendants shall be excluded from any share in the distribution of the surplus. If such advancement be not equal to such amount, such child, or his descendants, shall be entitled to receive so much only, as is sufficient to make all the shares of all the children, in such surplus and advancement, to be equal, as near as can be estimated. The maintaining or educating, or the giving

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of money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement, within the meaning of this section, nor shall the foregoing provisions of this section apply in any case where there is any real property of the intestate to descend to his heirs.

Derivation: Code Civil Procedure, § 2733. For remainder of section, see Code Civil Procedure, § 2733.

§ 100. Estates of married women.

The provisions of this article respecting the distribution of property of deceased persons apply to the personal property of deceased married women. The husband of any such deceased married woman shall be entitled to the same distributive share in the personal property of his wife to which a widow is entitled in the personal property of her husband by the provisions of this article and no more. (Amended by L. 1919, ch. 295, in effect May 3, 1919.)

Derivation: Code Civil Procedure, § 2734.

§ 101. Liability of heirs and devisees for funeral expenses and debt of decedent.

(Amended by L. 1919, ch. 91; repealed and re-enacted as § 176, post, by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code Civil Procedure, § 1843.

§ 102. Liability of heir or devisee not affected where will makes specific provision for payment of debt.

(Repealed and re-enacted as § 192, post, by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code Civil Procedure, § 1859

§ 103. Action against husband for debts of deceased wife.

If a surviving husband does not take out letters of administration on the estate of his deceased wife, he is presumed to have assets in his hands sufficient to satisfy her debts, and is liable therefor. A husband is liable as administrator for the debts of his wife only to the extent of the assets received by him. If he dies leaving any assets of his wife unadministered, except as otherwise provided by law, they pass to his executors or administrators as part of his personal property, but are liable for her debts in preference to the creditors of the husband.

Derivation: Code Civil Procedure, § 2660. For remainder of section, see Code Civil Procedure, § 2660. Amended by L. 1909, ch. 240, § 15, in effect April 22, 1909.

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§ 104. Application of certain sections in this article.

Section twenty-five hundred and fourteen of the code of civil procedure is applicable to the provisions of sections ninety-eight to one hundred, both inclusive, and section one hundred and three, of this chapter. (Added by L. 1909, ch. 240, § 16, in effect April 22, 1909.)

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ARTICLE 4.

EXECUTORS, ADMINISTRATORS AND TESTAMENTARY TRUSTEES.

SECTION 110. Sales of real estate by executors under authority of will.
111. Investment of trust funds.
112. Executors de son tort abolished.
113. Special promise to answer for debt of testator or intestate.
114. Liability of executors and administrators of executors and administrators.
115. Rights of administrators de bonis non.
116. Actions upon contract by and against executors.
117. Administrators to have same rights and liabilities as executors.
118. Actions of trespass by executors and administrators.
119. Actions of trespass against executors and administrators.
120. Actions for wrongs, by or against executors and administrators.
121. Action or proceeding by executor of executor.
122. Appraisal of estate of deceased person.

§ 110. Sales of real estate by executors under authority of will.

Sales of real estate situate within the state of New York, made by executors in pursuance of an authority given by any last will, unless otherwise directed in such will, may be public or private and on such terms as in the opinion of the executor shall be most advantageous to those interested therein.

Derivation: L. 1883, ch. 65, § 1.

§ 111. Investment of trust funds.

An executor, administrator, trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this state are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unincumbered real property in this state worth fifty per centum more than the amount loaned thereon, and in shares or parts of such bonds and mortgages, provided that any share or part of such bond and mortgage so held shall not be subordinate to any other shares thereof and shall not be subject to any prior interest therein, and provided further that bonds and mortgages in parts of which any fiduciary may invest trust funds together with any guaranties of payment, insurance policies and other instruments and evidences of title relating thereto shall be held for the benefit of such fiduciary and of any other persons interested in such bonds and mortgages by a trust company or title guaranty corporation organized under the laws of this state, and that a certificate setting forth that such corporation holds such instruments for the benefit of such fiduciary and of any other persons who may be interested in such bond and mortgage among whom the corporation holding such instruments may be included, be executed by such corporation and delivered to each person who becomes interested in such bond and mortgage. Every corporation issuing any such certificate shall keep a record in proper books of account of all certificates

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issued pursuant to the foregoing provisions. An executor, administrator, trustee or other person holding trust funds may require such personal bonds or guarantees of payment to accompany investments as may seem prudent, and all premiums paid on such guarantees may be charged to or paid out of income, providing that such charge or payment be not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself. (Amended by L. 1918, ch. 544, in effect May 8, 1918.)

Derivation: L. 1897, ch. 417, § 9 pt., as amended by L. 1902, ch. 295, § 1, and L. 1907, ch. 669, § 1.

§ 112. Executors de son tort abolished.

No person shall be liable to an action as executor of his own wrong, for having received, taken or interfered with, the property or effects of a deceased person; but shall be responsible as a wrongdoer in the proper action to the executors, or general or special administrators, of such deceased person, for the value of any property or effects so taken or received, and for all damages caused by his acts, to the estate of the deceased.

Derivation: R. S., Part 3, ch. 8, Tit. 3, Art. 1, § 17.

§ 113. Special promise to answer for debt of testator or intestate.

No executor or administrator shall be chargeable upon any special promise to answer damages, or to pay the debts of the testator or intestate, out of his own estate, unless the agreement for that purpose, or some memorandum or note thereof, be in writing, and signed by such executor or administrator, or by some other person by him thereunto specially authorized.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 1.

§ 114. Liability of executors and administrators of executors and administrators.

The executors and administrators of every person, who, as executor, either of right or in his own wrong, or as administrator, shall have wasted or converted to his own use, any goods, chattels, or estate, of any deceased person, shall be chargeable in the same manner as their testator or intestate would have been, if living.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 6.

§ 115. Rights of administrators de bonis non.

When administration of the effects of a deceased person, which shall have been left unadministered by any previous executor or administrator of the same estate, shall be granted to any person, such person may appeal from any judgment obtained against such previous executor or administrator of the same estate, or against the original testator or intestate; and shall defend any appeal from any such judgment; and shall have the same remedies, in the prosecution or defense of any action, by or against such previous

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executors or administrators, and for the collection and enforcing of any judgment obtained by them, as they would have by law.

Derivation: R. S., Part 3, ch. 8, Tit. 3, Art. 1, § 18.

§ 116. Actions upon contract by and against executors.

Actions of account, and all other actions upon contract, may be maintained by and against executors, in all cases in which the same might have been maintained, by or against their respective testators.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 2.

§ 117. Administrators to have same rights and liabilities as executors.

Administrators shall have actions to demand and recover the debts due to their intestate, and the personal property and effects of their intestate; and shall answer and be accountable to others to whom the intestate was holden or bound, in the same manner as executors.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 3.

§ 118. Actions of trespass by executors and administrators.

Executors and administrators shall have actions of trespass against any person who shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods of their testator or intestate in his lifetime. They may also maintain actions for trespass committed on the real estate of the deceased, in his lifetime.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 4.

§ 119. Actions of trespass against executors and administrators.

Any person, or his personal representatives, shall have actions of trespass against the executor or administrator of any testator or intestate, who in his lifetime shall have wasted, destroyed, taken or carried away, or converted to his own use, the goods or chattels of any such person, or committed any trespass on the real estate of any such person.

Derivation: R. S., Part 2, ch. 6, Tit. 5, § 5.

§ 120. Actions for wrongs, by or against executors and administrators.

For wrongs done to the property, rights or interests of another, for which an action might be maintained against the wrong-doer, such action may be brought by the person injured, or after his death, by his executors or administrators, against such wrong-doer, and after his death against his executors or administrators, in the same manner and with the like effect, in all respects, as actions founded upon contracts. This section shall not extend to an action

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for personal injuries, as such action is defined in section thirty-three hundred and forty-three of the code of civil procedure; except that nothing herein contained shall affect the right of action now existing to recover damages for injuries resulting in death.

Added by L. 1909, ch. 240, § 16. In effect April 22, 1909.

§ 121. Action or proceeding by executor of executor.

An executor of an executor shall have no authority to commence or maintain any action or proceeding relating to the estate, effects or rights of the testator of the first executor, or to take any charge or control thereof, as such executor.

Added by L. 1909, ch. 240, § 16. In effect April 22, 1909.

§ 122. Appraisal of estate of deceased person.

Whenever by reason of the provisions of any law of this state it shall become necessary to appraise in whole or in part the estate of any deceased person, the persons whose duty it shall be to make such appraisal shall value the real estate at its full and true value, taking into consideration actual sales of neighboring real estate similarly situated during the year immediately preceding the date of such appraisal, if any; and they shall value all such property, stocks, bonds, or securities as are customarily bought or sold in open markets in the city of New York or elsewhere, for the day on which such appraisal or report may be required, by ascertaining the range of the market and the average of prices as thus found, running through a reasonable period of time.

Derivation: L. 1891, ch. 34, part of § 1. For remainder of section, see General Corporation Law and Debtor and Creditor Law. Renumbered by L. 1909, ch. 240, § 17.

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ARTICLE 5.

(Article added by L. 1920, ch. 919, in effect April 15, 1921.)

ACTION FOR CAUSING DEATH OF DECEDENT.

SECTION 130. Action by executor or administrator for negligence or wrongful act or default causing death of decedent.
131. Trial and burden of proof of contributory negligence.
132. Amount of recovery.
133. Distribution of damages recovered.
134. Next of kin defined.

§ 130. Action by executor or administrator for negligence or wrongful act or default causing death of decedent.

The executor or administrator duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, of a decedent who has left him or her surviving a husband, wife, or next of kin, may maintain an action to recover damages for a wrongful act, neglect or default, by which the decedent's death was caused, against a natural person who, or a corporation which, would have been liable to an action in favor of the decedent by reason thereof if death had not ensued. Such an action must be commenced within two years after the decedent's death. When the husband, wife or next of kin, do not participate in the estate of decedent, under a will appointing an executor, other than such husband, wife or next of kin, who refuses to bring such action, then such husband, wife or next of kin shall be entitled to have an administrator appointed for the purpose of prosecuting such action for their benefit. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1902.

§ 131. Trial and burden of proof of contributory negligence.

On the trial of an action to recover damages for causing death the contributory negligence of the person killed shall be a defense, to be pleaded and proven by the defendant. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 841-b, as added by L. 1913, ch. 228. This section has been duplicated in Civil practice act, § 265.

§ 132. Amount of recovery.

The damages awarded to the plaintiff may be such a sum as the jury upon a writ of inquiry, or upon a trial, or, where issues of fact are tried without a jury, the court or the referee, deems to

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be a fair and just compensation for the pecuniary injuries, resulting from the decedent's death, to the person or persons, for whose benefit the action is brought. If the decedent leaves surviving a father and a mother, the death of such father prior to the verdict shall not affect the amount of damages recoverable. When final judgment for the plaintiff is rendered, the clerk must add to the sum so awarded, interest thereupon from the decedent's death, and include it in the judgment. The inquisition, verdict, report or decision, may specify the day from which interest is to be computed; if it omits so to do, the day may be determined by the clerk, upon affidavits. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1904.

§ 133. Distribution of damages recovered.

The damages recovered in an action, as prescribed in this article, or obtained through settlement without action, are exclusively for the benefit of the decedent's husband or wife, and next of kin; and, when they are collected, they must be distributed by the plaintiff, or representative, as if they were unbequeathed assets, left in his hands, after payment of all debts, and expenses of administration; subject however to the following provisions, to wit:

1. In case the decedent shall have left him surviving a wife or a husband, but no children, the damages recovered shall be for the sole benefit of such wife or husband.

2. In case the decedent leaves neither husband, wife, nor issue, but leaves a mother, and a father who has abandoned him, or who has left the maintenance and support of their child to the mother, the damages or recovery shall be for the sole benefit of such mother.

3. In case the decedent leaves no husband or wife, issue or father, or having left a father entitled to recovery, who dies prior to the recovery or verdict, the damages or recovery shall be for the sole benefit of the mother if then living.

The reasonable expenses of the action, or settlement, the reasonable funeral expenses of the decedent, and the commissions of the plaintiff or representative, upon the residue may be fixed by the surrogate, upon notice, given in such a manner and to such persons, as the surrogate deems proper or upon the judicial settlement of the account of the plaintiff, or representative, and may be deducted from the recovery. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1903.

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§ 134. Next of kin defined.

The term "next of kin," as used in the last three sections of this article includes all those entitled under the provisions of law relating to the distribution of personal property, to share in the unbequeathed assets of a decedent, after payment of debts and expenses, other than a surviving husband or wife, except if decedent leaves surviving a father and mother but no widow, child or descendant, it shall mean both the father and the mother. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, §§ 1870, 1905.

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ARTICLE 6.

(Article added by L. 1920, ch. 919, in effect April 15, 1921.)

ACTION BY OR AGAINST AN EXECUTOR OR ADMINISTRATOR; PRACTICE REGULATIONS.

SECTION 140. Executor and administrator; how to sue or be sued.
141. When personal and representative causes of action may be joined.
142. Separate dockets and executions.
143. Regulations, when some of the executors are not summoned.
144. Executors who have not qualified not necessary parties.
145. When action not to abate by death.
146. Action upon refusal to pay legacy or distributive share.
147. Action by infant for legacy or distributive share; guardian's bond.
148. When action barred by judgment against heir or devisee.
149. Decedent's real property not bound by judgment against executor or administrator.
150. Want of assets not to be pleaded by executor or administrator.
151. Leave to issue execution against executor or administrator.
152. How leave procured; order; and contents thereof.
153. Security before grant of order.
154. Execution on former judgment.
155. Action against executor or administrator who has been superseded.
156. False pleading by executor or administrator.
157. When inventory may be contradicted.
158. Liability for uncollected demands.
159. The last two sections qualified.
160. Foreign executor or administrator may sue or be sued.

§ 140. Executor and administrator; how to sue or be sued.

An action or special proceeding, hereafter commenced by an executor or administrator, upon a cause of action, belonging to him in his representative capacity, or an action or special proceeding, hereafter commenced against him, except where it is brought to charge him personally, must be brought by or against him in his representative capacity. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1814.

§ 141. When personal and representative causes of action may be joined.

An action may be brought against an executor or administrator, personally, and also in his representative capacity, in either of the following cases:

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1. Where the complaint sets forth a cause of action against him in both capacities, or states facts, which render it uncertain in which capacity the cause of action exists against him.

2. Where the complaint sets forth two or more causes of action against the defendant, in different capacities, all of which grow out of the same transaction, or transactions connected with the same subject of action; do not require different places or modes of trial; and are not inconsistent with each other.

In a case specified in this section, a judgment for the plaintiff for a sum of money must distinctly show whether it is awarded against the defendant personally, or in his representative capacity. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1815.

§ 142. Separate dockets and executions.

In a case specified in the last section, or where costs, to be collected out of the individual property of an executor or administrator, are awarded in an action by or against him in his representative capacity, so much of the judgment, as awards a sum of money against him personally, may be separately docketed, and a separate execution may be issued thereupon, as if the judgment contained no award against him in his representative capacity. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1816.

§ 143. Regulations, when some of the executors are not summoned.

In an action or special proceeding against two or more executors or administrators, representing the same decedent, all are considered as one person; and those who are first served with process, or first appear, must answer the plaintiff. Separate answers, by different executors or administrators cannot be required or allowed, except by direction of the court. Judgment in favor of the plaintiff may be entered, and, in a proper case, execution may be issued against all the defendants as if all had appeared. But this section does not affect the plaintiff's right to bring into court all the executors or administrators who are parties. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1817.

§ 144. Executors who have not qualified not necessary parties.

One of two or more executors to whom letters testamentary have not been issued is not a necessary party to an action or special proceeding in favor of or against the executors in their representative capacity. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1818.

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§ 145. When action not to abate by death.

Where an action or special proceeding is authorized or directed by law, to be brought by or in the name of an executor, administrator or a person appointed by a surrogate, as prescribed by law, to dispose of the real property of a decedent, his death or removal does not abate the action or special proceeding; but the same may be continued by his successor, who must, upon his application, or that of a party interested, be substituted for that purpose by the order of the court, a copy of which must be annexed to the judgment-roll. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, §§ 766, 1828.

§ 146. Action upon refusal to pay legacy or distributive share.

If, after the expiration of one year from the granting of letters testamentary or letters of administration, an executor or administrator refuses, upon demand, to pay a legacy, or distributive share, the person entitled thereto may maintain such an action against him, as the case requires. But for the purpose of computing the time, within which such an action must be commenced, the cause of action is deemed to accrue, when the executor's or administrator's account is judicially settled, and not before. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1819.

§ 147. Action by infant for legacy or distributive share; guardian's bond.

The guardian ad litem of an infant, in whose favor an action is brought, as prescribed in the last section, must, unless he is also the general guardian, execute and file with the clerk, before the commencement of the action, a bond to the infant, with at least two sufficient sureties, in a penalty fixed by a judge of the court, conditioned that the guardian will duly account to the infant, when he attains full age, or, in case of his death, to his personal representatives, for all money or property, which the guardian may receive, by reason of the legacy or distributive share. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1820.

§ 148. When action barred by judgment against heir or devisee.

A final judgment against an heir or devisee bars an action against the executor or administrator of the decedent, for the same cause, and every other remedy to enforce payment thereof out of the decedent's property, unless an execution against property issued upon the judgment has been returned wholly or partly unsatisfied, or sufficient real property to satisfy the judgment has not descended, or been devised, to the judgment debtor. But, if the

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judgment was recovered for a debt or legacy, expressly charged upon the estate descended or devised, the bar is absolute. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1821.

§ 149. Decedent's real property not bound by judgment against executor or administrator.

Real property, which belonged to a decedent, is not bound, or in any way affected, by a judgment against his executor or administrator, and is not liable to be sold by virtue of an execution issued upon such a judgment, unless the judgment is expressly made, by its terms, a lien upon specific real property therein described, or expressly directs the sale thereof. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1823.

§ 150. Want of assets not to be pleaded by executor or administrator.

In an action against an executor or administrator, in his representative capacity, wherein the complaint demands judgment for a sum of money, the existence, sufficiency, or want of assets, shall not be pleaded by either party; and the plaintiff's right of recovery is not affected thereby, except with respect to the costs to be awarded, as prescribed by law. A judgment in such an action is not evidence of assets in the defendant's hands. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1824.

§ 151. Leave to issue execution against executor or administrator.

Except as provided in this section, an execution shall not be issued, upon a judgment for a sum of money, against an executor or administrator, in his representative capacity, until an order permitting it to be issued has been made by the surrogate from whose court the letters were issued. Such an order must specify the sum to be collected, and the execution must be indorsed with a direction to collect that sum. If a judgment be jointly against an executor or administrator in his representative capacity and one or more other parties, execution may be issued thereon, without such order, against such other party or parties, but it must have indorsed thereon a direction not to levy against any property to the possession of which such executor or administrator as such is or may be entitled. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1825.

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§ 152. How leave procured; order; and contents thereof.

At least six days' notice of the application for an order specified in the last section, must be personally served upon the executor or administrator, unless it appears that service cannot be so made with due diligence; in which case notice must be given to such persons, and in such manner as the surrogate directs, by an order to show cause why the application should not be granted. Where it appears that the assets, after payment of all sums chargeable against them for expenses, and for claims entitled to priority as against the plaintiff, are not, or will not be, sufficient to pay all the debts, legacies or other claims of the class to which the plaintiff's claim belongs, the sum, directed to be collected by the execution, shall not exceed the plaintiff's just proportion of the assets. In that case, one or more orders may be afterwards made in like manner, and one or more executions may be afterwards issued, whenever it appears that the sum directed to be collected by the first execution is less than the plaintiff's just proportion. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1826.

§ 153. Security before grant of order.

Where a judgment has been rendered against an executor or administrator, for a legacy or distributive share, the surrogate, before granting an order permitting an execution to be issued thereupon, may, and in a proper case must, require the applicant to file in his office an undertaking to the defendant, in such a sum and with such sureties as the surrogate directs, to the effect that if, after collection of any sum of money by virtue of the execution, the remaining assets are not sufficient to pay all sums for which the defendant is chargeable for expenses, claims entitled to priority as against the applicant, and the other legacies or distributive shares, of the class to which the applicant's claim belongs, the plaintiff will refund to the defendant the sum so collected, or such ratable part thereof, with the other legatees or representatives of the same class, as is necessary to make up the deficiency. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1827.

§ 154. Execution on former judgment.

An execution may be issued, in the name of an executor or administrator, in his representative capacity, upon a judgment recovered by any person who preceded him in the administration of the same estate, in any case where it might have been issued in favor of the original plaintiff, and without a substitution. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1829.

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§ 155. Action against executor or administrator who has been superseded.

If an executor or administrator is defendant in an action or special proceeding, pending when his powers cease, the plaintiff may, in a proper case, proceed therein against him, to charge him personally; but a judgment or other determination, thereafter rendered or made against him, is not of any force, as against the estate of the decedent, or a person succeeding to the administration thereof. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1830.

§ 156. False pleading by executor or administrator.

An executor or administrator cannot be made personally liable to the adverse party, for a debt or for damages, by reason of his having made a false allegation in pleading. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1831.

§ 157. When inventory may be contradicted.

In an action or special proceeding, to which an executor or administrator is a party, wherein the question whether he has administered the estate of the decedent, or any part thereof, is in issue, or is the subject of inquiry, and the inventory of assets, filed by him, is given in evidence, either party may rebut the same by proof, either

1. That any property was omitted in the inventory, or was not returned therein at its true value; or

2. That any property has perished, or has been lost, without the fault of the executor or administrator; or has been fairly sold by him, at private or public sale, at a less price than the value so returned; or that, since the return of the inventory, it has deteriorated or enhanced in value. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1832.

§ 158. Liability for uncollected demands.

In such an action or special proceeding, the executor or administrator shall not be charged with a demand or right of action, included in the inventory, unless it appears that the same has been collected, or might have been collected, with due diligence. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1833.

§ 159. The last two sections qualified.

The last two sections do not vary any rule of evidence respecting any proof, which an executor or administrator may now make. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1834.

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§ 180. Foreign executor or administrator may sue or be sued.

An executor or administrator duly appointed in any other state, territory or district of the United States or in any foreign country may sue or be sued in any court in this state in his capacity of executor or administrator in like manner and under like restrictions as a nonresident may sue or be sued, if, within twenty days after any such executor or administrator shall commence, or appear in, any action or proceeding in any court in this state or within twenty days after he shall be required or directed by summons or otherwise to appear therein, there shall be filed in the office of the clerk of the court, in which such action or proceeding shall be brought or be pending, a copy of the letters testamentary or letters of administration issued to such executor or administrator duly authenticated as prescribed by section forty-five of this chapter; in default whereof all proceedings in such action or proceeding may be stayed until such duly authenticated copy of such letters shall be so filed. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1836-a.

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ARTICLE 7.

(Article added by L. 1920, ch. 919, in effect April 15, 1921.)

ACTION BY CREDITOR AGAINST DEBTOR'S NEXT OF KIN, LEGATEE OR DEVISEE.

SECTION 170. Action against legatees and others to enforce liability for decedent's debt.
171. Action may be joint or several.
172. In joint action, recovery to be apportioned.
173. Recovery in a several action.
174. Requisites to recovery in action against legatee.
175. Recovery; in action against a preferred legatee.
176. Liability of heirs and devisees for debt of decedent.
177. When action therefor may be brought against heirs and devisees.
178. Effect of application to sell real property.
179. Action must be joint.
180. Recovery to be apportioned.
181. Requisites to recovery against heirs.
182. Requisites to recovery against devisees.
183. Deductions for prior recoveries.
184. Complaint to describe land descended or devised.
185. Judgment; when to be satisfied out of real property.
186. When judgment not a lien on real property aliened.
187. How judgment taken, when real property aliened.
188. Classification of debts, to be enforced under this article.
189. Defense, by reason of other prior or equal claims.
190. When such a claim is paid.
191. Action not suspended by infancy.
192. Liability of heir or devisee not affected where will makes specific provision for payment of debt.
193. One action, where same person is liable in different capacities.
194. Next of kin defined.

§ 170. Action against legatees and others to enforce liability for decedent's debt.

An action may be maintained, as prescribed in this article, against the surviving husband or wife of a decedent, and the next of kin of an intestate, or the next of kin or legatees of a testator to recover, to the extent of the assets paid or distributed to them, for a debt of the decedent, upon which an action might have been maintained, against the executor or administrator. The neglect of the creditor to present his claim to the executor or administrator, within the time prescribed by law for that purpose, does not impair his right to maintain such an action. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1837.

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§ 171. Action may be joint or several.

An action, specified in the last section, must be brought, either jointly against the surviving husband or wife, and all the legatees or all the next of kin, as the case may be, or at the plaintiff's election, against one of them only. But where a legacy is received by two or more persons jointly, they are deemed one legatee, within the meaning of each provision of this article, relating to legatees. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1838.

§ 172. In joint action, recovery to be apportioned.

Where a joint action is brought, as prescribed in the last section, the whole sum, which the plaintiff is entitled to recover, must be apportioned among the defendants, in proportion to the legacy or distributive share, as the case may be, received by each of them; and the final judgment must award, against each defendant separately, the proportionate sum thus ascertained. The costs of the action, if the plaintiff is entitled to costs, must be apportioned in like manner; except that the expenses of serving the summons upon each defendant must be taxed against him only; and one sheriff's fee, for returning an execution, may be taxed against each defendant, against whom any sum is awarded. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1839.

§ 173. Recovery in a several action.

Where an action is brought against the surviving husband or wife only, or against one only of the next of kin, or legatees, the sum, which the plaintiff is entitled to recover, cannot exceed the sum which he would have been entitled to recover from the same defendant, in an action brought, as prescribed in the last section. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1840.

§ 174. Requisites to recover in action against legatee.

If the action is brought against a legatee, or against all the legatees, the plaintiff must show, either

1. That no assets were delivered by the executor or administrator of the decedent, to the surviving husband or wife, or next of kin; or

2. That the value of assets, so delivered, has been recovered by some other creditor; or

3. That those assets, after payment of the expenses of administration and preferred demands, are not sufficient to satisfy the demand of the plaintiff; in which case, he can recover only for the deficiency. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1841.

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§ 175. Recovery; in action against a preferred legatee.

Where some of the legatees are preferred to others, an action may be maintained, as prescribed in the last five sections, against one or all of those who are equally preferred, or equally deferred, as if the legatees of that class were all the legatees. But where it is brought against a preferred legatee, or a class of preferred legatees, the plaintiff must show, in addition to the matters, with respect to the next of kin, required by the provisions of the last section, the same matters, with respect to each legatee, or class of legatees, to whom the defendant or defendants are preferred. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1842.

§ 176. Liability of heirs and devisees for debt of decedent.

The heirs of an intestate, and the heirs and devisees of a testator, are respectively liable for the funeral expenses and debts of the decedent, arising by simple contract, or by specialty, to the extent of the estate, interest, and right in the real property, which descended to them from, or was effectually devised to them by, the decedent. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Decedent estate law, § 101.

§ 177. When action therefor may be brought against heirs and devisees.

An action to enforce the liability declared in the preceding section, cannot be maintained, except in one of the following cases:

1. Where one year has elapsed since the death of the decedent, and no letters testamentary, or letters of administration, upon his estate, have been granted within the state.

2. Where eighteen months have elapsed since letters testamentary, or letters of administration, upon his estate, were granted, within the state. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1844.

§ 178. Effect of application to sell real property.

Where it appears that, at the time of the commencement of an action to enforce the liability declared in section one hundred and seventy-six of this chapter, a proceeding for the judicial settlement of the accounts of the executor or administrator of decedent in which an order to dispose of real property of the decedent for the payment of his debts may be made, is pending in a surrogate's court, having jurisdiction, the proceedings in the action, subsequent to the complaint, must be stayed by the court, until the proceeding is disposed of, unless the plaintiff elects to discontinue. If an order

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to dispose of real property is granted, the action must be dismissed, unless the plaintiff has alleged in his complaint, or alleges in a supplemental complaint, that real property, other than that included in the decree, descended or was devised to the defendants. If the plaintiff elects to proceed under such an allegation, he is entitled to a preference in payment, out of the real property, with respect to which the allegation is made; but he cannot share, as a creditor, in the distribution of the money, arising from the disposal of the real property, described in the order, and the judgment in the action does not charge, or in any way affect, that property. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1845.

§ 179. Action must be joint.

An action against heirs or devisees, brought as prescribed in the last three sections, must be brought jointly against all the heirs, to whom any real property descended from the decedent, or jointly against all the devisees, as the case may be. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1846.

§ 180. Recovery to be apportioned.

In such an action, the sum, which the plaintiff is entitled to recover, for damages and costs, must be apportioned among all the defendants, in proportion to the value of the real property descended to each heir, or devised to each devisee, as the case may be, as prescribed in section one hundred and seventy-two of this chapter, for a similar apportionment among legatees or next of kin, in proportion to the assets received by them. The final judgment must, in like manner, award against each defendant the proportionate sum, with which he is chargeable. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1847.

§ 181. Requisites to recovery against heirs.

Where the action is brought against heirs, the plaintiff must show, either

1. That the decedent's assets, if any, within the state were not sufficient to pay the plaintiff's debt, in addition to the expenses of administration, and debts of a prior class; or

2. That the plaintiff has been unable, or will be unable, with due diligence, to collect his debt, by proceedings in the proper surrogate's court, and by action against the executor or administrator, and against the surviving husband or wife, legatees, and next of kin.

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The executor's or administrator's account, as rendered to, and settled by, the surrogate, may be used as presmptive evidence of any of the facts, required to be shown by this section. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1848.

§ 182. Requisites to recovery against devisees.
Where the action is brought against devisees, the plaintiff must show, in addition to the matters specified in the last section, either that the real property of the decedent, which descended to his heirs, was not sufficient to pay the plaintiff's debt, or that the plaintiff has been unable, or will be unable, with due diligence, to collect his debt by an action against the heirs. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1849.

§ 183. Deductions for prior recoveries.
Where the assets, applicable to the plaintiff's debt, were sufficient to pay a part thereof, or a part thereof has been collected from the executor or administrator, or from the surviving husband or wife, next of kin, or legatees, the plaintiff can recover only for the residue, remaining unpaid or uncollected; and if the action is against devisees, he can recover only for the residue, which the real estate descended, or the amount of his recovery against the heirs, is insufficient to discharge. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1850.

§ 184. Complaint to describe land descended or devised.
The complaint must describe, with common certainty, the real property, descended or devised to the defendant; and must specify its value. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1851.

§ 185. Judgment; when to be satisfied out of real property.
If it appears that any of the real property, which descended or was devised to a defendant, had not been aliened by him at the time of the commencement of the action, the final judgment must direct that the debt of the plaintiff, or the proportion thereof which he is entitled to recover against that defendant, be collected out of that real property. Such a judgment is preferred, as a lien upon that property, to a judgment obtained against the defendant, for his individual debt or demand. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1852.

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§ 186. When judgment not a lien on real property aliened.

But a judgment, rendered as prescribed in the last section, does not bind, and the execution thereupon cannot in any way affect, the title of a purchaser, in good faith and for value, acquired before a notice of the pendency of the action is filed, or final judgment is entered, and the judgment-roll filed. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1853.

§ 187. How judgment taken, when real property aliened.

If it appears that, before the commencement of the action, or afterwards and before the filing of a notice of the pendency of the action, the defendant aliened the real property descended or devised to him, or any part thereof, the plaintiff may, at his election, take a final judgment against him for the value of the property so aliened, or so much thereof as may be necessary, as in an action for the defendant's own debt. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1854.

§ 188. Classification of debts, to be enforced under this article.

Where the surviving husband or wife, next of kin, legatees, heirs, or devisees, are liable for demands against the decedent, as prescribed in this article, they must give preference in the payment thereof, and they are so liable therefor, in the order prescribed by law, for the payment of debts by an executor or administrator. Preference of payment cannot be given to a demand, over another of the same class, except where a similar preference by an executor or administrator is allowed by law. The commencement of an action, under any provision of this article, does not entitle the plaintiff's demand to preference over another of the same class, except as otherwise specially prescribed by law. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1855.

§ 189. Defense, by reason of other prior or equal claims.

Where it appears, in an action brought as prescribed in this article, that there are unsatisfied demands against the decedent's estate, of a class prior to that of the plaintiff's demand, the defendant is entitled to judgment, if the value of the property, which was received, devised, or inherited, as the case may be, by the class to which he belongs, does not exceed the amount of the valid demands of a prior class. If it exceeds the amount of those demands, the judgment against the defendant cannot exceed such a proportion of the plaintiff's demand, as the total amount of the valid

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demands of his class bears to the excess. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1856.

§ 190. When such a claim is paid.

Where a defendant, or a person belonging to his class, has paid a demand against the decedent's estate, of a class prior to that of the plaintiff's demand, or has paid a demand of the same class, the amount of the demand so paid must be estimated, in ascertaining the amount to be recovered, as if it was outstanding and unpaid. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1857.

§ 191. Action not suspended by infancy.

An action against heirs or devisees, brought as prescribed in this article, is not delayed, nor is the remedy of the plaintiff suspended, by reason of the infancy of any of the parties; except that an execution shall not be issued against an infant heir or devisee, until the expiration of one year after final judgment is rendered, and the judgment-roll filed. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1858.

§ 192. Liability of heir or devisee not affected where will makes specific provision for payment of debt.

This article does not affect the liability of an heir or devisee, for a debt of a testator, where the will expressly charges the debt exclusively upon the real property descended or devised, or makes it payable exclusively by the heir or devisee, or out of the real property descended or devised, before resorting to the personal property, or to any other real property descended or devised. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Decedent estate law, § 102.

§ 193. One action, where same person is liable in different capacities.

Where a person, who takes real property of a decedent by devise, and also by descent; or who takes personal property as next of kin, and also as legatee; or who takes both real and personal property in either capacity; or who is executor or administrator, and also takes in either of the before mentioned capacities; would be liable in one capacity, for a demand against the decedent, after the exhaustion of the remedy against him in another capacity; the plaintiff, in any action to charge him, which can be maintained, without joining with him any other person, except a person whose liability is in all respects the same, may recover any sum, for which he is liable, although the remedy against him in another

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capacity was not exhausted. But this section does not increase the sum, which the plaintiff is entitled to recover against him, in the capacity in which he is actually liable; nor does it charge a defendant individually, who is liable only in a representative capacity. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1860.

§ 194. Next of kin defined.

The term "next of kin," as used in this article, includes all those entitled, under the provisions of law relating to the distribution of personal property, to share in the unbequeathed assets of a decedent, after payment of debts and expenses, other than a surviving husband or wife. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1870.

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ARTICLE 8.

ACTION TO ESTABLISH A WILL OR CONSTRUE A DEVISE.

(Article added by L. 1920, ch. 919, in effect April 15, 1921.)

SECTION 200. When action to establish a will may be brought.
201. Judgment, that will be established.
202. Judgment admitting the will to probate.
203. Contents of judgment; surrogate's duty.
204. Proof of lost will in certain cases.
205. Action to determine validity, construction or effect of devise.
206. Retrospective effect of this article.

§ 200. When action to establish a will may be brought.

An action to procure a judgment, establishing a will, may be maintained, by any person interested in the establishment thereof, in either of the following cases:

1. Where a will of real or personal property, or both, has been executed, in such a manner and under such circumstances, that it might, under the laws of the state, be admitted to probate in a surrogate's court; but the original will is in another state or country, under such circumstances, that it cannot be obtained for that purpose; or has been lost or destroyed, by accident or design, before it was duly proved and recorded within the state.

2. Where a will of personal property made by a person, who resided without the state, at the time of the execution thereof, or at the time of his death, has been duly executed, according to the laws of the state or country in which it was executed, or in which the testator resided at the time of his death, and the case is not one, where the will can be admitted to probate in a surrogate's court, under the laws of the state. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1861.

§ 201. Judgment, that will be established.

If, in such an action, the facts necessary to establish the validity of the will, as prescribed in the last section, are satisfactorily proved, final judgment must be rendered, establishing the will accordingly. But where the will of a person, who was a resident of the state at the time of his death, is established as prescribed in the last section, the judgment establishing it does not affect the construction or validity of any provision contained therein; and such a question arising with respect to any provision, must be determined in the same action, or in another action or a special pro-

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ceeding, as the case requires, as if the will was executed within the state. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1862.

§ 202. Judgment admitting the will to probate.

Where the parties to the action, who have appeared or have been duly summoned, include all the persons who would be necessary parties to a special proceeding, in a surrogate's court, for the probate of the same will and the grant of letters thereupon, if the circumstances were such that it could have been proved in a surrogate's court; the final judgment, rendered as prescribed in the last section, must direct, that an exemplified copy thereof be transmitted to the surrogate having jurisdiction, and be recorded in his office; and that letters testamentary, or letters of administration with the will annexed, be issued thereupon from his court, in the same manner, and with like effect, as upon a will duly proved in that court. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1863.

§ 203. Contents of judgment; surrogate's duty.

A copy of the will so established, or, if it is lost or destroyed, the substance thereof must be incorporated into a final judgment, rendered as prescribed in the last section; and the surrogate must record the same, and issue letters thereupon, as directed in the judgment. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1864.

§ 204. Proof of last will in certain cases.

But the plaintiff is not entitled to a judgment, establishing a lost or destroyed will, as prescribed in this article, unless the will was in existence at the time of the testator's death, or was fraudulently destroyed in his lifetime; and its provisions are clearly and distinctly proved by at least two credible witnesses, a correct copy or draft being equivalent to one witness. (Added by L. 1920, ch. 919, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1865.

§ 205. Action to determine validity, construction or effect of devise.

The validity, construction, or effect, under the laws of the state, of a testamentary disposition of real property situated within the state, or of an interest in such property, which would descend to the heir of an intestate, may be determined, in an action brought for that purpose, in like manner as the validity of a deed, purporting to convey land, may be determined. The judgment in such an action may perpetually enjoin any party from setting up or

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from impeaching the devise, or otherwise making any claim in contravention to the determination of the court, as justice requires. But this section does not apply to a case, where the question in controversy is determined by the decree of a surrogate's court, duly rendered upon allegations for that purpose, as prescribed by law, where jurisdiction of the plaintiff was duly acquired in the special proceeding in the surrogate's court, before the commencement of the action. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1866.

§ 206. Retrospective effect of this article.

The provisions of this article apply as well to wills made before, as to those made after, this article takes effect. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1867.

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ARTICLE 9.

(Article added by L. 1920, ch. 919, in effect April 15, 1921.)

RECEIVERS.

SECTION 210. Receiver of decedent's estate.

§ 210. Receiver of decedent's estate.

Where the estate of a decedent has been brought under the jurisdiction of the supreme court, by an action for partition or distribution, or for the construction or establishment of a will, the court may, upon the death of the sole surviving executor, appoint a receiver of the estate, pending the action, upon such terms and conditions, and upon such notice to the parties interested, as the court directs, and upon such security, if any, as to the court seems proper. For the purpose of carrying into effect the judgment and orders of the court in relation to the estate, a receiver so appointed is the successor in interest of the surviving executor; and has, subject to the direction of the court, the like power, as an administrator with the will annexed. (Added by L. 1920, ch. 919, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1869.

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ARTICLE 10.

(Article renumbered by L. 1920, ch. 919, in effect April 15, 1921.)

LAWS REPEALED; WHEN TO TAKE EFFECT.

SECTION 250. Laws repealed.
251. When to take effect.

§ 250. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (Renumbered by L. 1920, ch. 919, in effect April 15, 1921.)

§ 251. When to take effect.

This chapter shall take effect immediately. (Renumbered by L. 1920, ch. 919, in effect April 15, 1921.)

SCHEDULE OF LAWS REPEALED.

Revised Statutes.... Part 2, chapter 6, title 1, §§ 1–5, 21, 22, 40–53, 69–71

Revised Statutes.... Part 2, chapter 6, title 4, §§ 55, 58

Revised Statutes.... Part 2, chapter 6, title 5, §§ 1–6, 23

Revised Statutes.... Part 3, chapter 7, title 3, §§ 67–70

* Revised Statutes.... Part 3, chapter 8, title 3, §§ 1, 2, 11, 17, 18

Laws of	Chapter	Section
1787.....	47.....	All
1799.....	75.....	All
1801.....	9.....	All
R. L. 1813...	23.....	All
R. L. 1813...	75.....	All
1815.....	157.....	All
1821.....	207.....	All
1828.....	21.....	1, ¶¶ 83, 95, 196, 336, 544 (2d meet.)
1828.....	313.....	All
1829.....	148.....	All
1835.....	264.....	All
1837.....	234.....	All
1840.....	348.....	1

* Amended by L. 1909, ch. 240, § 93.

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Laws of	Chapter	Section
1848.....	319.....	Proviso in § 6.
1860.....	360.....	All
1865.....	368.....	Proviso in § 6.
1867.....	782.....	3, 4
1869.....	22.....	All
1873.....	397.....	Proviso in § 5.
1875.....	267.....	Proviso in § 7.
1875.....	343.....	Proviso in § 5.
1876.....	118.....	All
1883.....	65.....	All
1886.....	236.....	Proviso in § 7.
1887.....	315.....	Proviso in § 5.
1887.....	317.....	Proviso in § 7.
1890.....	286.....	Proviso in § 6.
1891.....	34.....	1, pt. relating to estates of deceased persons.
1893.....	100.....	All
1896.....	547.....	280–296
1897.....	417.....	9, pt, relating to executors, administrators and other trustees of estates of deceased persons.
1902.....	295.....	1, pt. amending L. 1897, Ch. 417, § 9, as to executors, administrators and other trustees of estates of deceased persons.
1903.....	623.....	Pt. amending the proviso in L. 1848, Ch. 319, § 6.
*1904.....	106.....	All
1904.....	146.....	All
1907.....	669.....	1, pt. amending L. 1897, Ch. 417, § 9, as to executors, administrators and other trustees of estates of deceased persons.

Code Civil Procedure §§ 1843, 1859, 1868, 2611, 2628, 2633; § 2634, to and including words "in his office"; § 2660, words "If a surviving husband" to "creditors of the husband"; §§ 2694, 2703, 2704, 2732; § 2733, except last two sentences; § 2734.

* Added to schedule by L. 1909, ch. 240, § 106.

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INDEX TO DECEDENT ESTATE LAW.

(REFERENCE IS MADE TO SECTIONS.)

ACTIONS: SECTION.

by child born after making of will..... 28
by subscribing witness..... 28
against husband for debts of deceased wife..... 103
upon contract by and against executors..... 116
of trespass by executors and administrators..... 118
against executors and administrators..... 119
for wrongs by or against executors and administrators..... 120
or proceedings by executor of executor..... 121
for causing death of decedent:
action by executor or administrator for negligence or wrongful act or default causing death of decedent..... 130
trial and burden of proof of contributory negligence..... 131
amount of recovery..... 132
distribution of damages recovered..... 133
next of kin defined..... 134
by or against an executor or administrator; practice regulations:
executor and administrator; how to sue or be sued..... 140
when personal and representative causes of action may be joined. 141
separate dockets and executions..... 142
regulations, when some of the executors are not summoned..... 143
executors who have not qualified not necessary parties..... 144
when action not to abate by death..... 145
action upon refusal to pay legacy or distributive share..... 146
action by infant for legacy or distributive share; guardian's bond 147
when action barred by judgment against heir or devisee..... 148
decedent's real property not bound by judgment against executor or administrator..... 149
want of assets not to be pleaded by executor or administrator... 150
leave to issue execution against executor or administrator..... 151
how leave procured; order; and contents thereof..... 152
security before grant of order..... 153

Digitized by Google

ACTIONS—Continued. SECTION.
execution on former judgment..... 154
action against executor or administrator who has been superseded 155
false pleading by executor or administrator..... 156
when inventory may be contradicted..... 157
liability for uncollected demands..... 158
the last two sections qualified..... 159
foreign executor or administrator may sue or be sued..... 160
by creditor against debtor's next of kin, legatee or devisee:
action against legatees and others to enforce liability for decedent's debt 170
action may be joint or several..... 171
in joint action, recovery to be apportioned..... 172
recovery in a several action..... 173
requisites to recovery in action against legatee..... 174
recovery; in action against a preferred legatee..... 175
liability of heirs and devisees for debt of decedent..... 176
when action therefor may be brought against heirs and devisees. 177
effect of application to sell real property..... 178
action must be joint..... 179
recovery to be apportioned..... 180
requisites to recovery against heirs..... 181
requisites to recovery against devisees..... 182
deductions for prior recoveries..... 183
complaint to describe land descended or devised..... 184
judgment; when to be satisfied out of real property..... 185
when judgment not a lien or real property aliened..... 186
how judgment taken, when real property aliened..... 187
classification of debts, to be enforced under this article..... 188
defense, by reason of other prior or equal claims..... 189
when such a claim is paid..... 190
action not suspended by infancy..... 191
liability of heir or devisee not affected where will makes specific provision for payment of debt..... 192
one action, where same person is liable in different capacities.... 193
next of kin defined..... 194
to establish a will or construe a devise:
when action to establish a will may be brought..... 200
judgment, that will be established..... 201
judgment admitting the will to probate..... 202
contents of judgment; surrogate's duty..... 203

Digitized by Google

ACTIONS—Continued. SECTION.
proof of lost will in certain cases 204
action to determine validity, construction or effect of devise 205
retrospective effect of this article 206

ADMINISTRATORS: *See Actions; Executors.*
investment of trust funds by 111
special promise to answer for debt of intestate 113
liability of administrators of executors and administrators 114
de bonis non, rights of 115
to have same rights and liabilities as executors 117
actions of trespass by 118
against 119
actions for wrongs by or against 120
appraisal of estate of deceased person 122

ADVANCEMENTS:
of real and personal estates 96
how adjusted 97
of personal estates 99

ALIENS:
devises of real property to 13
alienism of ancestor 95

ANCESTORS: *See Descent of Real Property; Distribution of Personal Property.*

APPRAISAL:
of estate of deceased person 122

ASSOCIATIONS:
devise or bequest to benevolent, ... 17
to charitable, ... 17
to literary, ... 17
to scientific, ... 17

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SECTION.

ASSOCIATIONS.—(Continued).
devise or bequest to religious, ... 17
to missionary, ... 17

BEQUEST:
unwritten wills of personal property, when allowed..... 16
to certain societies, associations and corporations..... 17
to subscribing witness..... 27
to child or descendant or to brother or sister not to lapse..... 29

BROTHERS: *See Descent of Real Property; Distribution of Personal Property.*
devise or bequest to..... 29

CANCELLATION: *See Revocation.*

CHILDREN:
born after making of will..... 26
action by 28
devise or bequest to..... 29
revocation of will by marriage and birth of issue..... 35
posthumous, descent, etc., of property to.....93, 98
advancements to 96, 99
illegitimate, descent, etc., of property to.....89, 98
distribution of personal property to..... 98

COLLATERAL RELATIVES: *See Descent of Real Property; Distribution of Personal Property.*

CONVEYANCE:
bond or agreement to convey property devised or bequeathed not a revocation of devise or bequest..... 37
conveyance when not deemed a revocation of devise or bequest.. 39
when deemed a revocation..... 40

CORPORATIONS:
devise or bequest to benevolent,..... 17
to charitable, ... 17
to literary, ... 17
to scientific, ... 17
to religious, ... 17
to missionary 17

COUNTY CLERK:
record of will in office of 42
index of wills in office of 43

CREDITOR: *See Actions.*

DEATH OF DECEDENT: *See Actions.*

DEBTOR: *See Actions.*

DEBTS:
liability of heirs and devisees for debt of decedent..... 176
of heirs and devisees not affected where will makes specific provision for payment of debt..... 192
of husband for debts of deceased wife..... 103
of executors and administrators of executors and administrators. 114
special promise to answer for debt of testator or intestate..... 113

DECEDENT: *See Actions.*

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SECTION.

DEFINITIONS:
will 2
codicil 2
real property 80
inheritance 80
living 80
advancements 99

DESCENDANTS: *See Descent of Real Property; Distribution of Personal Property.*

DESCENT OF REAL PROPERTY:
definitions and use of terms 80
general rule of 81
lineal descendants of equal degree 82
of unequal degree 83
inheritance by father 84
mother 85
collateral relatives 86
of equal degree 86
brothers and sisters and their descendants 87
of father and mother and their descendants, etc 88
by illegitimates 89
relatives of the half-blood 90
of husband or wife 91
in cases not otherwise provided for 92
posthumous children and relatives 93
inheritance, sole or in common 94
alienism of ancestor 95
advancements of real and personal estates 96
educating child, etc., not 96
how adjusted 97

DEVISE: *See Actions.*
who may 10
what real property subject to 11
who may take real property by 12
of real property to aliens 13
to certain societies, associations and corporations 17
to subscribing witness 27
to child or descendant or to brother or sister not to lapse 29
validity of purchase not withstanding devise 46

DEVISEE: *See Devise.*
liability of, for debt of decedent 176
not effected where will makes specific provision for payment of debt 192

DISTRIBUTION OF PERSONAL PROPERTY:
general rule of 98
advancements of personal estates 99
estates of married women 100
liability of heirs and devisees for debt and funeral expenses of decedent 101
liability of heir or devisee not affected where will makes specific provision for payment of debt 192
action against husband for debts of deceased wife 193

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EXECUTORS: *See Actions.* SECTION.
sales of real estate by, under authority of will..... 110
investment of trust funds by..... 111
"de son tort" abolished..... 112
special promise to answer for debt of testator, by..... 113
liability of executors of executors or administrators..... 114
actions upon contract by and against..... 116
actions of trespass by 118
against 119
actions for wrongs by or against..... 120
actions or proceedings by executor of executor..... 121
appraisal of estate of deceased person by..... 122
FATHER: *See Descent of Real Property; Distribution of Personal Property.*
FOREIGN WILLS:
recording will found in another state or foreign country..... 44
authentication of, for use in this state..... 45
FUNERAL EXPENSES:
liability of heirs, and devisees..... 101
HALF-BLOOD:
descent of real property to relatives of..... 90
distribution of personal property to relatives of..... 98
HEIRS: *See Descent of Real Property; Next of Kin.*
liability of, for debts of decedent..... 176
not affected where will makes specific provision for payment of debts 192
HUSBAND:
article three not to affect tenancy by courtesy..... 80
descent of real property to relatives of husband..... 91
deceased, when next of kin of wife deemed next of kin of..... 98
rights respecting distribution of personal property of wife..... 100
debts of deceased wife, liability for..... 103
ILLEGITIMATE CHILDREN: *See Children.*
INCUMBRANCE:
of property devised or bequeathed, not a revocation of devise or bequest 38
INHERITANCE: *See Descent of Real Property; Distribution of Personal Property.*
INTESTATE: *See Administrators; Descent of Real Property; Distribution of Personal Property.*
INVESTMENT:
of trust funds by executor or administrator..... 111
MOTHER: *See Descent of Real Property; Distribution of Personal Property.*
NEGLIGENCE: *See Actions.*
NEXT OF KIN: *See Distribution of Personal Property; Heirs.*
PARENTS: *See Descent of Real Property; Distribution of Personal Property.*

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SECTION.

PERSONAL PROPERTY:
who may make wills of 15
unwritten wills of, when allowed 16
bequests to corporations, associations, societies, etc 17
bequest to subscribing witness 27
bequest to child or descendant or to brother or sister not to lapse 29
bond or agreement to convey, not a revocation of bequest 37
advancements of personal estates 96, 99
distribution of, of decedent 98
appraisal of, of decedent 122

POSTHUMOUS CHILDREN: *See Children.*

PURCHASE:
Validity of purchase notwithstanding devise 46

REAL PROPERTY: *See Descent of Real Property.*
what may be devised 11
who may take by devise 12
devises of, to aliens 13
wills of, how construed 14
sale of, by executors under authority of will 110
appraisal of, of decedent 122

RECEIVERS:
of descedent's estate 210

RECORD:
of wills in County Clerk's office 42
County Clerk's index of recorded wills 43
recording will found in another state or foreign country 44

RESIDENCE:
effect of change of residence since execution of will 24
effect of, on testamentary dispositions 47

REVOCATION:
of written wills 34
by marriage and birth of issue 35
of will of unmarried woman 36
bond or agreement to convey property devised or bequeathed not a 37
charge or incumbrance not a 38
conveyance, when not to be deemed a 39
conveyance, when deemed a 40
of second will, not to revive first 41

SALE:
of real estate by executors under authority of will 110

SISTERS: *See Descent of Real Property; Distribution of Personal Property.*
devise or bequest to 29

SOCIETIES:
devise or bequest to certain benevolent 17
charitable 17
scientific 17
literary 17
religious 17
missionary 17

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SECTION.

SURROGATE: *See Administrators; Descent; Distribution; Executors; Testamentary Trustees; Wills.*
reception of wills for safe keeping by 30
sealing and indorsing wills received for safe keeping..... 31
delivery of wills received for safekeeping by..... 32
opening of wills received for safe keeping by 33

TESTAMENTARY TRUSTEES: *See Executors.*

TESTATOR: *See Executors; Wills.*

TRESPASS:
actions of, by executors and administrators..... 118
actions of, against executors and administrators..... 119

TRUST FUNDS:
investment of, by executor or administrator..... 111

WIFE:
article 3 not to affect dower..... 80
descent of real property to relatives of wife..... 91
distribution of personal property to widow..... 98
when next of kin of husband deemed next of kin of deceased wife. 98
estates of married women..... 100
liability of husband for debts of deceased wife 102

WILLS: *See Actions.*
who may devise..... 10
what real property may be devised..... 11
who may take real property by devise..... 12
devises of real property to aliens..... 13
of real estate, how construed..... 14
of personal property, who may make..... 15
unwritten, of personal property, when allowed..... 16
devise or bequest to certain corporations, societies and associations.. 17
execution, manner of 21
witnesses to, to write names and places of residence..... 22
executed without state, validity. 22a
what wills may be proved..... 23
change of residence since execution of will, effect of..... 24
applicati n of certain provisions to wills previously made..... 25
child born after making of..... 26
devise or bequest to subscribing witness..... 27
action by child born after making of will..... 28
by subscribing witness. 28
devise or bequest to child or descendant or to brother or sister not to lapse. 29
reception of, for safe keeping..... 30
sealing and indorsing wills received for safe keeping..... 31
delivery of wills received for safe keeping..... 32
opening wills received by surrogate for safe keeping..... 33
revocation and cancellation of written wills..... 34
revocation of, by marriage. 35
will of unmarried woman. 36
bond or agreement to convey property devised or bequeathed not a revocation. 37
change or incumbrance not a revocation..... 38
conveyance, when not to be deemed a revocation..... 39

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SECTION.

conveyance, when to be deemed a revocation 40
canceling or revocation of second will not to revive first 41
record of, in County Clerk's office 42
County Clerk's index of recorded wills 43
recording will found in another state or foreign country 44
authentication of papers from another state or foreign country for use in this state 45
validity of purchase notwithstanding devise 46
validity and effect of testamentary dispositions 47

WITNESSES:
execution of wills in presence of 21
to will, to write names and places of residence 22
devise or bequest to subscribing witness 27
action by subscribing witness 28

WOMEN:
will of unmarried woman 36
estates of married women 100

WRONGFUL ACTS: *See Actions.*

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DOMESTIC RELATIONS LAW.

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CONSOLIDATORS' NOTES TO TEXT OF DOMESTIC RELATIONS LAW.

GENERAL NOTE.

Scope of Law.—Domestic Relations Law is the result of an examination of the various general statutes upon the subject of domestic relations from and including L. 1788, Ch. 15, and ending with the session of 1907.

Domestic Relations Law embraces provisions relating to marriages; husband and wife; custody and wages of children; guardians; adoption and apprentices and servants.

All live provisions of general statutes which relate to the subjects above defined have been consolidated herein, and all dead, inactive and obsolete general statutes pertaining to the subject matter are recommended for repeal by a schedule of repeals.

HISTORICAL NOTE.

Legislation on subjects coming within the term "domestic relations" as used herein began at an early date.

The first general statute relating to apprentices was L. 1788, Ch. 15, followed by L. 1801, Ch. 11.

Provision was made for the custody of children whose parents had separated by L. 1815, Ch. 221.

The next legislation on this subject was R. S., Pt. 2, Ch. 1, Tit. 1, and Ch. 8, Tits. 1, 3, 4.

By L. 1840, Ch. 80, a married woman was permitted to insure, or cause to be insured, the life of her husband for her own benefit.

L. 1845, Ch. 11, enables a married woman to receive a patent for her own invention pursuant to the laws of the United States and hold and enjoy the same.

A married woman, by L. 1848, Ch. 200, was empowered to hold property for her sole and separate use as if she were a single female.

This was followed by legislation enlarging the rights of married women at each successive stage.

The first general statute authorizing the adoption of minor children was L. 1873, Ch. 830. Prior to this all adoptions were made or had by contract.

By L. 1880, Ch. 472, husband and wife holding any lands as tenants in common, joint tenants, or as tenants by entireties, were empowered to make partition or division of the same between themselves.

L. 1887, Ch. 537, permitted a husband and wife each to make transfer or

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conveyance of real estate direct to each other without the intervention of a third party.

All illegitimate children whose parents should intermarry were to be considered as legitimate for all purposes by L. 1895, Ch. 531.

Most of the laws pertaining to this subject, then existing, were revised by L. 1896, Ch. 272, being chapter 48 of the general laws, and known as the Domestic Relations Law.

In the consolidation of this law an examination of upwards of one hundred general statutes, exclusive of the Revised Statutes, has been made.

In addition to the above, much time, care and attention was devoted to the examination of the Revised Statutes and the amendments thereto relating to the subjects contained in this law.

TABLE.

A.

Showing distribution of sections of former Domestic Relations Law as now found in the Consolidated Domestic Relations Law.

Former Section Number	New Section Number	Former Section Number	New Section Number
1 pt.	1	29	59
1 pt.	2	30	60
2	5	40	70
3	6	41	71
4	7	42	72
5	10	50	80
6	11	51	81
7	12	52	82
8	13	53	83
9	14	54	84
10	15	60	110
11	16	61	111
12	17	62	112
13	18	63	113
14	19	64	114
15	20	65	115
16	21	66	116
17	22	67	117
18	23	68	118
19	24	70	120
20, Article II	25	71	121
20, Article III	50	72	122
21	51	73	123
22	52	74	124
23	53	75	125
24	54	76	126
25	55	77	127
26	56	90	140
27	57	91	141
28	58		

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B.

Showing the provisions of the Revised Statutes, Session Laws and Code of Civil Procedure which have been consolidated in the Domestic Relations Law.

Sections, etc., of Revised Statutes, etc.	Sections of Consol. Law
R. S., pt. 2, Ch. 8, Tit. I § 49	8
L. 1884, Ch. 438, § 1	86
L. 1884, Ch. 438, § 3	87
L. 1884, Ch. 438, § 4 pt.	88
L. 1884, Ch. 438, § 5 pt.	124
L. 1884, Ch. 438, § 7 pt.	115
L. 1897, Ch. 417, § 9 pt.	85
L. 1905, Ch. 495, § 2	60
Code Civ. Pro. § 450 pt.	51
§ 1206	51
§ 1273 pt.	51
§ 1761	8

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DOMESTIC RELATIONS LAW.

(L. 1909, CHAP. 19, BEING CHAP. 14 OF THE CONSOLIDATED LAWS. IN EFFECT FEB. 17, 1909.)

ARTICLE 1. Short title; definitions (§§ 1, 2).
2. Marriages (§§ 5–8).
3. Solemnization, proof and effect of marriage (§§ 10–25).
4. Certain rights and liabilities of husband and wife (§§ 50–60).
5. The custody and wages of children (§§ 70–72).
6. Guardians (§§ 80–88).
7. The adoption of children (§§ 110–118).
8. Apprentices and servants (§§ 120–127).
9. Laws repealed; when to take effect (§§ 140, 141).

ARTICLE 1.

SHORT TITLE; DEFINITIONS.

SECTION 1. Short title.
2. Definitions.

§ 1. Short title.

This chapter shall be known as the "Domestic Relations Law."

Derivation: Domestic Relations Law, § 1 pt.

§ 2. Definitions.

A minor is a person under the age of twenty-one years. A minor reaches majority at that age.

Derivation: Domestic Relations Law, § 1 pt.

ARTICLE 2.

MARRIAGES.

SECTION 5. Incestuous and void marriages.
6. Void marriages.
7. Voidable marriages.
8. Marriage after divorce for adultery.

§ 5. Incestuous and void marriages.

A marriage is incestuous and void whether the relatives are legitimate or illegitimate between either:

1. An ancestor and a descendant;
2. A brother and sister of either the whole or the half blood;
3. An uncle and niece or an aunt and nephew.

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If a marriage prohibited by the foregoing provisions of this section be solemnized it shall be void, and the parties thereto shall each be fined not less than fifty nor more than one hundred dollars and may, in the discretion of the court in addition to said fine, be imprisoned for a term not exceeding six months. Any person who shall knowingly and wilfully solemnize such marriage, or procure or aid in the solemnization of the same, shall be deemed guilty of a misdemeanor and shall be fined or imprisoned in like manner.

Derivation: Domestic Relations Law, § 2, as amended by L. 1907, ch. 742, § 1.

§ 6. Void marriages.

A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

1. Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person; provided, that if such former marriage has been dissolved for the cause of the adultery of such person, he or she may marry again in the cases provided for in section eight of this chapter and such subsequent marriage shall be valid;

2. Such former husband or wife has been finally sentenced to imprisonment for life;

3. Such former husband or wife has absented himself or herself for five successive years then last past without being known to such person to be living during that time. (Amended by L. 1915, ch. 266, in effect April 12, 1915.)

Derivation: Domestic Relations Law, § 3.

§ 7. Voidable marriages.

A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

1. Is under the age of legal consent, which is eighteen years;

2. Is incapable of consenting to a marriage for want of understanding;

3. Is incapable of entering into the married state from physical cause;

4. Consents to such marriage by reason of force, duress or fraud;

5. Has a husband or a wife by a former marriage living, and such former husband or wife has absented himself or herself for five successive years then last past without being known to such party to be living during that time.

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Actions to annul a void or voidable marriage may be brought only as provided in the code of civil procedure.

Derivation: Domestic Relations Law, § 4.

§ 8. Marriage after divorce for adultery.

Whenever a marriage has been or shall be dissolved, the complainant may marry again during the lifetime of the defendant. But a defendant for whose adultery the judgment of divorce has been granted in this state may not marry again during the lifetime of the complainant, unless the court in which the judgment of divorce was rendered shall in that respect modify such judgment, which modification shall be made only upon satisfactory proof that three years have elapsed since the decree of divorce was rendered, and that the conduct of the defendant since the dissolution of said marriage has been uniformly good; and a defendant for whose adultery the judgment of divorce has been rendered in another state or country may not marry again in this state during the lifetime of the complainant unless three years have elapsed since the rendition of such judgment and there is no legal impediment, by reason of such judgment, to such marriage in the state or country where the judgment was rendered. But this section shall not prevent the remarriage of the parties to an action for divorce. (Amended by L. 1915, ch. 266; L. 1919, ch. 265, in effect May 3, 1919.)

Derivation: R. S., Part 2, ch. 8, Tit. 1, § 49, as amended by L. 1897, ch. 452, § 1; Code Civil Procedure, § 1761.

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ARTICLE 3.

SOLEMNIZATION, PROOF AND EFFECT OF MARRIAGE.

SECTION 10. Marriage a civil contract.
11. By whom a marriage must be solemnized.
11a. Duty of city clerk in certain cities of the first class.
12. Marriage, how solemnized.
13. *Marriages licenses.
14. Town and city clerks to issue marriage licenses; form.
15. Duty of town and city clerks.
16. False statements and affidavits.
17. Clergyman or officer violating article; penalty.
18. Clergyman or officer, when protected.
19. Records to be kept by town and city clerks.
20. Records to be kept by the county clerk.
21. Forms and books to be furnished.
22. Penalty for violation.
23. Presumptive evidence.
24. Effect of marriage of parents of illegitimates.
25. License, when to be obtained.

§ 10. Marriage a civil contract.

Marriage, so far as its validity in law is concerned, continues to be a civil contract, to which the consent of parties capable in law of making a contract is essential.

Derivation: Domestic Relations Law, § 5, as amended by L. 1901, ch. 339, § 1, and renumbered and amended by L. 1907, ch. 742, § 3.

§ 11. By whom a marriage must be solemnized.

The marriage must be solemnized by either:

1. A clergyman or minister of any religion, or by the senior leader, or any of the other three leaders, of The Society for Ethical Culture in the city of New York, having its principal office in the borough of Manhattan, or by the leader of The Brooklyn Society for Ethical Culture having its principal office in the borough of Brooklyn, of the city of New York.

2. A mayor, recorder, city magistrate, police justice or police magistrate of a city, or the city clerk of a city of the first class of over one million inhabitants or any of his deputies or a regular clerk, designated by him for such purpose as provided in section eleven-a of this chapter, except that in cities which contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor, or police justice, and by no other officer of such city, except as provided in subdivisions one and three of this section;

3. A justice or judge of a court of record, or of a municipal court, a police justice of a village, or a justice of the peace; except that justices of the peace in cities which contain more than one hundred thousand and less than one million inhabitants, shall have no power to solemnize marriages; or

4. A written contract of marriage signed by both parties and at least two witnesses who shall subscribe the same, stating the place of residence of

* So in original.

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each of the parties and witnesses and the date and place of marriage, and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded, provided, however, that all of such contracts of marriage must in order to be valid be acknowledged before a judge of a court of record. Such contract shall be recorded within six months, after its execution in the office of the clerk of the county in which the marriage was solemnized.

The word "clergyman," when used in the following sections of this article, includes each person referred to in the first subdivision of this section. The word "magistrate," when so used, includes any person referred to in the second or third subdivision. (Amended by L. 1911, ch. 610; L. 1912, ch. 166; L. 1913, ch. 490; L. 1916, ch. 524, L. 1918, ch. 620; L. 1920, ch. 231, in effect April 16, 1920.)

Derivation: Domestic Relations Law, § 6, as amended by L. 1901, ch. 339, § 2; L. 1902, ch. 522, § 1; L. 1905, ch. 499, § 1; L. 1907, ch. 480, § 1, and renumbered and amended by L. 1907, ch. 742, § 4, and amended by L. 1908, ch. 73, § 1.

§ 11-a. Duty of city clerk in certain cities of the first class.

The city clerk of a city of the first class of over one million inhabitants may designate in writing any of his deputies or one of his regular clerks to perform marriage ceremonies, which designation shall be in writing and be filed in the office of such city clerk. The day and hour of such filing shall be endorsed on the designation. Any such designation shall be and remain in effect for six months from the filing thereof. The designation of a deputy heretofore made for such purpose shall expire ninety days after this section, as hereby amended, takes effect. Whenever persons to whom the city clerk of any such city of the first class shall have issued a marriage license shall request him to solemnize the rites of matrimony between them and present to him such license it shall be the duty of such clerk, either in person or by one of his deputies or a regular clerk so designated by him to solemnize such marriage; provided, however, that nothing contained either in this section or in subdivision two of section eleven of this chapter shall be construed as empowering or requiring either the said city clerk or any of his designated deputies or regular clerk to solemnize marriages at any place other than at the office of such city clerk. In all cases in which the city clerk of such city or one of his deputies or a regular clerk so designated shall perform a marriage ceremony such official shall demand and be entitled to collect therefor a fee of two dollars, which sum shall be paid by the contracting parties before or immediately upon the solemnization of the marriage; and all such fees so received shall be paid over monthly to the treasurer of the city. (Added by L. 1916, ch. 524; amended by L. 1918, ch. 620.)

§ 12. Marriage, how solemnized.

No particular form or ceremony is required when a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case, at least one witness beside the clergyman or magistrate must be present at the ceremony.

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The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among the people called friends or quakers, nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted.

Derivation: Domestic Relations Law, § 7, as renumbered and amended by L. 1907, ch. 742, § 5.

§ 13. Marriage licenses.

It shall be necessary for all persons intending to be married to obtain a marriage license from the town or city clerk of the town or city in which the woman to be married resides and to deliver said license to the clergyman or magistrate who is to officiate before the marriage can be performed. If the woman or both parties to be married are nonresidents of the state such license shall be obtained from the clerk of the town or city in which the marriage is to be performed; or, if the woman to be married resides upon an island located not less than twenty-five miles from the office or residence of the town clerk of the town of which such island is a part, and such office or residence is not on such island such license may be obtained from any justice of the peace residing on such island, and such justice, in respect to powers and duties relating to marriage licenses, shall be subject to the provisions of this article governing town clerks and shall file all statements or affidavits received by him while acting under the provisions of this section with the town clerk of such town. (Amended by L. 1914, ch. 230; L. 1918, ch. 236, in effect April 16, 1918.)

Derivation: Domestic Relations Law, § 8, as added by L. 1907, ch. 742, § 6.

§ 14. Town and city clerks to issue marriage licenses; form.

The town or city clerk of each and every town or city in this state is hereby empowered to issue marriage licenses to any parties applying for the same who may be entitled under the laws of this state to contract matrimony, authorizing the marriage of such parties, which license shall be substantially in the following form:

STATE OF NEW YORK,
County of.....
City or town of.....

Know all men by this certificate that any person authorized by law to perform marriage ceremonies within the state of New York to whom this may come, he, not knowing any lawful impediment thereto, is hereby authorized and empowered to solemnize the rites of matrimony between..... of .....
in the county of ..... and state of New York and
..... of ..... in the

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county of ..... and state of New York and to certify the same to be said parties or either of them under his hand and seal in his ministerial or official capacity and thereupon he is required to return his certificate in the form hereto annexed. The statements endorsed hereon or annexed hereto, by me subscribed, contain a full and true abstract of all of the facts concerning such parties disclosed by their affidavits or verified statements presented to me upon the application for this license.

In testimony whereof, I have hereunto set my hand and affixed the seal of said town or city at ..... this ..... day of ..... nineteen ..... Seal.

The form of the certificate annexed to said license and therein referred to shall be as follows:

I, ..., a ....., residing at ..... in the county of ..... and state of New York do hereby certify that I did on this ..... day of ..... in the year A. D., 19..., solemnize the rites of matrimony between ..... of ..... in the county of ..... and state of New York, and ..... of ..... in the county of ..... and state of New York in the presence of ..... and ..... as witness, and the license therefor is hereto annexed.

Witness my hand at ..... in the county of ..... this ..... day of ..... A. D., 19....

In the presence of

.....

.....

.....

There shall be endorsed upon the license or annexed thereto at the end thereof, subscribed by the clerk, an abstract of the facts concerning the parties as disclosed in their affidavits or verified statements at the time of the application for the license made in conformity to the provisions of section fifteen of this chapter.

The license issued, including the abstract of facts, and the certificate duly signed by the person who shall have solemnized the marriage therein authorized shall be returned by him to the office of the town or city clerk who issued the same on or before the tenth day of the month next succeeding the date of the solemnizing of the marriage therein authorized and any person or persons who shall willfully neglect to make such return within the time above required shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars or more than fifty dollars for each and every offense. (Amended by L. 1912, ch. 216, in effect Apr. 8, 1912.)

Derivation: Domestic Relations Law, § 9, as added by L. 1907, ch. 742, § 6.

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§ 15. Duty of town and city clerks.

It shall be the duty of the town or city clerk when an application for a marriage license is made to him to require each of the contracting parties to sign and verify a statement or affidavit before such clerk or one of his deputies, containing the following information. From the groom: Full name of husband, color, place of residence, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. From the bride: Full name of bride, place of residence, color, age, occupation, place of birth, name of father, country of birth, maiden name of mother, country of birth, number of marriage. From each: A statement in the following words: "I have not to my knowledge been infected with any venereal disease, or if I have been so infected within five years I have had a laboratory test within that period which shows that I am now free from infection from any such disease." The said clerk shall also embody in the statement if either or both of the applicants have been previously married, a statement as to whether the former husband or husbands or the former wife or wives of the respective applicants are living or dead and as to whether either or both of said applicants are divorced persons, if so, when and where the divorce or divorces were granted and shall also embody therein a statement that no legal impediment exists as to the right of each of the applicants to enter into the marriage state, the town or city clerk is hereby given full power and authority to administer oaths and may require the applicants to produce witnesses to identify them or either of them and may also examine under oath or otherwise other witnesses as to any material inquiry pertaining to the issuing of the license; provided, however, that in cities of the first class the verified statements and affidavits may be made before any regular clerk of the city clerk's office designated for that purpose by the city clerk. If it appears from the affidavits and statements so taken, that the persons for whose marriage the license in question is demanded are legally competent to marry, the said clerk shall issue such license, except in the following cases. If it shall appear upon an application of the applicants as provided in this section that the man is under twenty-one years of age, or that the woman is under the age of eighteen years, then the town or city clerk before he shall issue a license shall require the written consent to the marriage from both parents of the minor or minors or

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such as shall then be living, or if the parents of both are dead, then the written consent of the guardian or guardians of such minor or minors. If one of the parents has been missing and has not been seen or heard from for a period of one year preceding the time of the application for the license, although diligent inquiry has been made to learn the whereabouts of such parent, the town or city clerk may issue a license to such minor upon the sworn statement and consent of the other parent. If the marriage of the parents of such minor has been dissolved by decree of divorce or annulment, the consent of the parent to whom the court which granted the decree has awarded the custody of such minor shall be sufficient. If there is no parent or guardian of the minor or minors living to their knowledge then the town or city clerk shall require the written consent to the marriage of the person under whose care or government the minor or minors may be before a license shall be issued. The parents, guardians or other persons whose consents it shall be necessary to obtain before the license shall issue, shall peronally appear before the town or city clerk and execute the same if they are residents of the state of New York and physically able so to do. If they are non-residents of the state the required consents may be executed and duly acknowledged without the state, but the consent with a certificate attached showing the authority of the officer to take acknowledgments must be duly filed with the town or city clerk before a license shall issue. Before issuing any license herein provided for, the town or city clerk shall be entitled to a fee of one dollar, which sum shall be paid by the applicants before or at the time the license is issued; and all such fees so received by the clerks of cities shall be paid monthly to the treasurer of the city wherein such license is issued. Any town or city clerk who shall issue a license to marry any persons one or both of whom shall not be at the time of the marriage under such license legally competent to marry without first requiring the parties to such marriage to make such affidavits and statements or who shall not require the procuring of the consents provided for by this article, which shall show that the parties authorized by said license to be married are legally

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competent to marry shall be guilty of a misdemeanor and on conviction thereof shall be fined in the sum of one hundred dollars for each and every offense. In any city the fees collected for the issuing of a marriage license, or for solemnizing a marriage, so far as collected for services rendered by any officer or employee of such city, shall be paid into the city treasury and may by ordinance be credited to any fund therein designated, and said ordinance, when duly enacted, shall have the force of law in such city. (Amended by L. 1912, ch. 241; L. 1917, ch. 503, in effect May 16, 1917.)

Derivation: Domestic Relations Law, § 10, as added by L. 1907, ch. 742, § 6, and amended by L. 1908, ch. 73, § 2.

§ 16. False statements and affidavits.

Any person who shall in any affidavit or statement required or provided for in this article wilfully and falsely swear in regard to any material fact as to the competency of any person for whose marriage the license in question or concerning the procuring or issuing of which such affidavit or statement may be made shall be deemed guilty of perjury and on conviction thereof shall be punished as provided by the statutes of this state.

Derivation: Domestic Relations Law, § 11, as added by L. 1907, ch. 742, § 6.

§ 17. Clergyman or officer violating article; penalty.

If any clergyman or other person authorized by the laws of this state to perform marriage ceremonies shall solemnize or presume to solemnize any marriage between any parties without a license

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being presented to him or them as herein provided or with knowledge that either party is legally incompetent to contract matrimony as is provided for in this article he shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine not less than fifty dollars nor more than five hundred dollars or by imprisonment for a term not exceeding one year.

Derivation: Domestic Relations Law, § 12, as added by L. 1907, ch. 742, § 6.

§ 18. Clergymen or officer, when protected.

Any such clergymen or officer as aforesaid to whom any such license duly issued may come and not having personal knowledge of the incompetency of either party therein named to contract matrimony, may lawfully solemnize matrimony between them.

Derivation: Domestic Relations Law, § 13, as added by L. 1907, ch. 742, § 6.

§ 19. Records to be kept by town and city clerks.

Each town and city clerk hereby empowered to issue marriage licenses, together with the certificate attached showing the performance of the marriage ceremony, which book shall be kept and preserved as a part of the public records of his office. Whenever an application is made for a search of such records the city or town clerk may make such search and furnish a certificate of the result to the applicant upon the payment of a fee of fifty cents for a search of one year and a further fee of ten cents for each additional year, which fees shall be paid in advance of such search. All such affidavits, statements and consents, immediately upon the taking or receiving of the same by the town or city clerk, shall be recorded and indexed and shall be public records and open to public inspection. On or before the fifteenth day of each month the said town and city clerk shall file in the office of the county clerk of the county in which said town or city is situated the original and except in the city of New York one copy of each affidavit, statement, consent, license and certificate, which have been filed or made before him during the preceding month. He shall not be required to file any of said documents with the county clerk until the license is returned with the certificate showing that the marriage to which they refer has been actually performed. (Amended by L. 1912,

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ch. 241; L. 1916, ch. 381; L. 1920, ch. 213; in effect Sept. 1, 1920.)

Derivation: Domestic Relations Law, § 14, as added by L. 1907, ch. 742, § 6.

§ 20. Records to be kept by the county clerk.

The county clerk of each county except the counties included within the city of New York shall keep a copy and index in a book kept in his office for that purpose of each statement, affidavit, consent and license, together with a copy of the certificate thereto attached showing the performance of the marriage ceremony, filed in his office. During the first twenty days of the months of January, April, July and October of each year the county clerk shall transmit to the state department of health at Albany, New York, all original affidavits, statements, consents and licenses with certificates attached filed in his office during the three months preceding the date of such report, also all original contracts of marriage made and recorded in his office during such period entered into in accordance with subdivision four of section eleven of this chapter, which record and certificate shall be kept on file and properly indexed by the state department of health. Whenever it is claimed that a mistake has been made through inadvertence in any of the statements, affidavits or other papers required by this section to be filed with the state department of health, the state commissioner of health may file with the same, affidavits upon the part of the person claiming to be aggrieved by such mistake, showing the true facts and the reason for the mistake and may make a note upon such original paper, statement or affidavit showing that a mistake is claimed to have been made and the nature thereof. The services rendered by the county clerk in carrying out the provisions of this article shall be a county charge except in counties where the county clerk is a salaried officer in which case they shall be a part of the duties of his office. (Amended by L. 1915, ch. 422; L. 1917, ch. 245, in effect April 23, 1917.)

Derivation: Domestic Relations Law, § 15, as added by L. 1907, ch. 742, § 6.

§ 21. Forms and books to be furnished.

Blank forms for marriage licenses and certificates and also the proper books for registration ruled for the items contained in said forms and also blank statements and affidavits and such other blanks

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as shall be necessary to comply with the provisions of this article shall be prepared by the state board of health and shall be furnished by said department at the expense of the state to the county clerks of the various counties of the state in the quantities needed from time to time, and the county clerk of each county shall distribute them to town and city clerks in his county in such quantities as their necessities shall require. The expense of distributing the same to said town and city clerks is hereby made a county charge.

Derivation: Domestic Relations Law, § 16, as added by L. 1907, ch. 742, § 6.

§ 22. Penalty for violation.

Any town, city or county clerk who shall violate any of the provisions of this article or shall fail to comply therewith shall be deemed guilty of a misdemeanor and shall pay a fine not exceeding the sum of one hundred dollars on conviction thereof.

Derivation: Domestic Relations Law, § 17, as added by L. 1907, ch. 742, § 6.

§ 23. Presumptive evidence.

Copies of the records of marriages including the license and certificate of marriage and all other records pertaining thereto duly certified by the clerk of the county where the same are recorded under his official seal shall be evidence in all courts.

Derivation: Domestic Relations Law, § 18, as added by L. 1907, ch. 742, § 6.

§ 24. Effect of marriage of parents of illegitimates.

All illegitimate children whose parents have heretofore intermarried or who shall hereafter intermarry shall thereby become legitimatized and shall become legitimate for all purposes and entitled to all the rights and privileges of legitimate children; but an estate or interest vested or trust created before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimatized. Nothing in this article shall be deemed or construed to in any manner impair or affect the validity of any lawful marriage contract made before the passage of this article.

Derivation: Domestic Relations Law, § 19, as added by L. 1907, ch. 742, § 6.

§ 25. License, when to be obtained.

The provisions of this article pertaining to the granting of the licenses before a marriage can be lawfully celebrated apply to all

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persons who assume the marriage relation in accordance with subdivision four of section eleven of this chapter. Nothing in this article contained shall be construed to render void by reason of a failure to procure a marriage license any marriage solemnized between persons of full age nor to render void any marriage between minors or with a minor under the legal age of consent where the consent of parent or guardian has been given and such marriage shall be for such cause voidable only as to minors or a minor upon complaint of such minors or minor or of the parent or guardian thereof.

Derivation: Domestic Relations Law, § 20, as added by L. 1907, ch. 742, § 6.

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ARTICLE 4.

CERTAIN RIGHTS AND LIABILITIES OF HUSBAND AND WIFE.

SECTION 50. Property of married woman.
51. Powers of married woman.
52. Insurance of husband's life.
53. Contracts in contemplation of marriage.
54. Liability of husband for ante-nuptial debts.
55. Contract of married woman not to bind husband.
56. Husband and wife may convey to each other or make partition.
57. Right of action by or against married woman for torts.
58. Pardon not to restore marital rights.
59. Compelling transfer of trust property.
60. Married woman's right of action for wages.

§ 50. Property of married woman.

Property, real or personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this chapter, and the rents, issues, proceeds and profits thereof, shall continue to be her sole and separate property as if she were unmarried, and shall not be subject to her husband's control or disposal nor liable for his debts.

Derivation: Domestic Relations Law, § 20.

§ 51. Powers of married woman.

A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts, as if she were unmarried; but a husband and wife cannot contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife. All sums that may be recovered in actions or special proceedings by a married woman to recover damages to her person, estate or character shall be the separate property of the wife. Judgment for or against a married woman, may be rendered and enforced, in a court of record, or not

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of record, as if she was single. A married woman may confess a judgment specified in section one thousand two hundred and seventy-three of the code of civil procedure.

Derivation: Domestic Relations Law, § 21; Code Civil Procedure, §§ 450, 1206, and 1273, incorporated. For remainder of sections 450 and 1273, see Code Civil Procedure, §§ 450, 1273.

§ 52. Insurance of husband's life.

A married woman may, in her own name, or in the name of a third person, with his consent, as her trustee, cause the life of her husband to be insured for a definite period, or for the term of his natural life. Where a married woman survives such period or term she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband, except, that where the premium actually paid annually out of the husband's property exceeds five hundred dollars, that portion of the insurance money which is purchased by excess of premium above five hundred dollars, is primarily liable for the husband's debts. The policy may provide that the insurance, if the married woman dies before it becomes due and without disposing of it, shall be paid to her husband or to his, her or their children, or to or for the use of one or more of those persons; and it may designate one or more trustees for a child or children to receive and manage such money until such child or children attain full age. The married woman may dispose of such policy by will or written acknowledged assignment to take effect on her death, if she dies thereafter leaving no descendants surviving. After the will or the assignment takes effect, the legatee or assignee takes such policy absolutely.

A policy of insurance on the life of any person for the benefit of a married woman is also assignable and may be surrendered to the company issuing the same, by her, or her legal representative, with the written consent of the assured.

Derivation: Domestic Relations Law, § 22.

§ 53. Contracts in contemplation of marriage.

A contract made between persons in contemplation of marriage, remains in full force after the marriage takes place.

Derivation: Domestic Relations Law, § 23.

§ 54. Liability of husband for ante-nuptial debts.

A husband who acquires property of his wife by ante-nuptial contract or otherwise, is liable for her debts contracted before marriage, but only to the extent of the property so acquired.

Derivation: Domestic Relations Law, § 24.

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§ 55. Contract of married woman not to bind husband.

A contract made by a married woman does not bind her husband or his property.

Derivation: Domestic Relations Law, § 25.

§ 56. Husband and wife may convey to each other or make partition.

Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in the instrument of partition or division, such instrument bars the wife's right to dower in such property, and also, if so expressed, the husband's tenancy by courtesy.

Derivation: Domestic Relations Law, § 26.

§ 57. Right of action by or against married woman for torts.

A married woman has a right of action for an injury to her person, property or character or for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts; her husband is not liable for such acts unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be presumed, but must be proved. This section does not affect any right, cause of action or defense existing before the eighteenth day of March, eighteen hundred and ninety.

Derivation: Domestic Relations Law, § 27.

§ 58. Pardon not to restore marital rights.

A pardon granted to a person sentenced to imprisonment for life within this state does not restore that person to the rights of a previous marriage or to the guardianship of a child, the issue of such a marriage.

Derivation: Domestic Relations Law, § 28.

§ 59. Compelling transfer of trust property.

A person who holds property as trustee of a married woman, under a deed of conveyance or otherwise, may, on the written request of such married woman, accompanied by a certificate of a justice of the supreme court, that he has examined the condition and situation of the property, and made inquiry into the capacity of such married woman to manage and control the same, convey to such married woman all or any portion of such property, or the rents, issues or profits thereof.

Derivation: Domestic Relations Law, § 29.

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§ 60. Married woman's right of action for wages.

A married woman shall have a cause of action in her own sole and separate right for all wages, salary, profits, compensation or other remuneration for which she may render work, labor or services, or which may be derived from any trade, business or occupation carried on by her, and her husband shall have no right of action therefor unless she or he with her knowledge and consent has otherwise expressly agreed with the person obligated to pay such wages, salary, profits, compensation or other remuneration. In any action or proceeding in which a married woman or her husband shall seek to recover wages, salary, profits, compensation or other remuneration for which such married woman has rendered work, labor or services or which was derived from any trade, business or occupation carried on by her or in which the loss of such wages, salary, profits, compensation or other remuneration shall be an item of damage claimed by a married woman or her husband, the presumption of law in all such cases shall be that such married woman is alone entitled thereto, unless the contrary expressly appears. This section shall not affect any right, cause of action or defense existing prior to May seventeenth, nineteen hundred and five.

Derivation: Domestic Relations Law, § 30, added by L. 1902, ch. 289, § 1, amended by L. 1905, ch. 495, § 1; L. 1905, ch. 495, § 2, incorporated.

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ARTICLE 5.

THE CUSTODY AND WAGES OF CHILDREN.

SECTION 70. Habeas corpus for child detained by parent.
71. Habeas corpus for child detained by Shakers.
72. Payment of wages to minor; when valid.

§ 70. Habeas corpus for child detained by parent.

A husband or wife, being an inhabitant of this state, living in a state of separation, without being divorced, who has a minor child, may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order.

Derivation: Domestic Relations Law, § 40.

§ 71. Habeas corpus for child detained by Shakers.

If it shall appear on such application, or the return of the writ, that the husband or wife of the applicant has become attached to the society of Shakers, and detains a child of the marriage among them, and that such child is secreted or concealed among them, the court may issue a warrant in aid of such writ of habeas corpus, directed to the sheriff of the county where the child is suspected to be, commanding such sheriff, in the day time, to search the dwelling-houses and other buildings of such society, or of any members thereof, or any other building specified in the warrant, for such child, and to bring him before the court, and the sheriff must forthwith execute such warrant.

Derivation: Domestic Relations Law, § 41.

§ 72. Payment of wages to minor; when valid.

Where a minor is in the employment of a person other than his parent or guardian, payment to such minor of his wages is valid, unless such parent or guardian notify the employer in writing,

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within thirty days after the commencement of such service, that such wages are claimed by such parent or guardian, but whenever such notice is given at any time payments to the minor shall not be valid for services rendered thereafter.

Derivation: Domestic Relations Law, § 42.

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ARTICLE 6.

GUARDIANS.

SECTION 80. Guardians in socage.
81. Appointment of guardians by parent.
82. Powers and duties of such guardians.
83. Duties and liabilities of all general guardians.
84. Guardianship of married woman.
85. Investment of trust funds by guardian.
86. Guardianship of indigent children by incorporated orphan asylums.
87. Record of children to be kept by orphan asylums.
88. Care and custody of poor children in institutions.

§ 80. Guardians in socage.

Where a minor for whom a general guardian of the property has not been appointed shall acquire real property, the guardianship of his property with the rights, powers and duties of a guardian in socage belongs:

1. To the father;
2. If there be no father, to the mother;
3. If there be no father or mother, to the nearest and eldest relative of full age, not under any legal incapacity; and as between relatives of the same degree of consanguinity, males shall be preferred.

The rights and authority of every such guardian shall be superseded by a testamentary or other guardian appointed in pursuance of this article.

Derivation: Domestic Relations Law, § 50.

§ 81. Appointment of guardians by parent.

A married woman is a joint guardian of her children with her husband, with equal powers, rights and duties in regard to them. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born, or of any living child under the age of twenty-one years and unmarried, may, by deed or last will, duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons. Either the father or mother may in the life-

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time of them both, by last will duly executed, appoint the other the guardian of the person and property of such child, during its minority. A person appointed guardian in pursuance of this section shall not exercise the power or authority thereof unless such will is admitted to probate, or such deed executed and recorded as provided by section twenty-eight hundred and fifty-one of the code of civil procedure.

Derivation: Domestic Relations Law, § 51, as amended by L. 1899, ch. 159, § 1.

§ 82. Powers and duties of such guardians.

Every such disposition, from the time it takes effect, shall vest in the person to whom made, if he accepts the appointment, all the rights and powers, and subject him to all the duties and obligations of a guardian of such minor, and shall be valid and effectual against every other person claiming the custody and tuition of such minor, as guardian in socage or otherwise. He may take the custody and charge of the tuition of such minor, and may maintain all proper actions for the wrongful taking or detention of the minor, and shall recover damages in such actions for the benefit of his ward. He shall also take the custody and management of the personal estate of such minor and the profits of his real estate, during the time for which such disposition shall have been made, and may bring such actions in relation thereto as a guardian in socage might by law.

Derivation: Domestic Relations Law, § 52.

§ 83. Duties and liabilities of all general guardians.

A general guardian or guardian in socage shall safely keep the property of his ward that shall come into his custody, and shall not make or suffer any waste, sale or destruction of such property or inheritance, but shall keep in repair and maintain the houses, gardens and other appurtenances to the lands of his ward, by and with the issues and profits thereof, or with such other moneys belonging to his ward as shall be in his possession; and shall deliver the same to his ward, when he comes to full age, in at least as good condition as such guardian received the same, inevitable decay and injury only excepted; and shall answer to his ward for the issues and profits of the real estate, received by him, by a lawful account, to be settled before any court, judge or surrogate having authority to settle the accounts of general and testamentary guardians; and any order, judgment or decree in any action or proceeding to settle

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such accounts may be enforced to the same extent, and in like manner as in the case of general and testamentary guardians. If any guardian shall make or suffer any waste, sale or destruction of the inheritance of his ward, he shall lose the custody of the same, and of such ward, and shall forfeit to the ward treble damages.

Derivation: Domestic Relations Law, § 53, as amended by L. 1903, ch. 369, § 1.

§ 84. Guardianship of married woman.

The lawful marriage of a woman before she attains her majority terminates a general guardianship with respect to her person, but not with respect to her property.

Derivation: Domestic Relations Law, § 54.

§ 85. Investment of trust funds by guardian.

A guardian holding trust funds for investment has the powers provided by section one hundred and eleven of the decedent estate law for an executor or administrator.

Derivation: L. 1897, ch. 417, § 9, pt., as amended by L. 1902, ch. 295, § 1 and L. 1907, ch. 669, § 1.

§ 86. Guardianship of indigent children by incorporated orphan asylums.

The guardianship of the person and the custody of an indigent child may be committed to an incorporated orphan asylum or other institution incorporated for the care of orphan, friendless or destitute children, by an instrument in writing signed:

1. By the parents of such child, if both such parents shall then be living, or by the surviving parent, if either parent of such child be dead;

2. If either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

3. If the father of such child shall have neglected to provide for his family during the six months next preceding, or if such child is a bastard, by the mother of such child;

4. If both parents of such child are dead, by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record;

5. If both parents of such child are dead, and no legal guardian of the person of such child has been appointed, and no such guardian has been appointed by will or by deed by either parent thereof, or if the parents have abandoned such child for the period of six

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months, then next preceding, by the mayor of the city or by the county judge of the county in which such asylum or such other institution is located.

Such instrument shall be upon such terms, for such time and subject to such conditions as may be agreed upon by the parties thereto. It may also provide for the absolute surrender of such child to such corporation. But no such corporation shall draw or receive money from public funds for the support of any such child committed under the provisions of this section, unless it shall have been determined by a court of competent jurisdiction that such child has no relative, parent or guardian living, or that such relative, parent or guardian, if living, is destitute and actually unable to provide for the support of such child.

Derivation: L. 1884, ch. 438, § 1.

§ 87. Record of children to be kept by orphan asylums.

All institutions, public or private, incorporated or not incorporated, for the reception of minors, whether as orphans, or as pauper, indigent, destitute, vagrant, disorderly or delinquent persons, are hereby required to provide and keep a record, in which shall be entered the date of reception, and the names and places of birth and residence, as nearly as the same can reasonably be ascertained, of all children admitted in such institutions, and how and by whom and for what cause such children shall be placed therein, and the names, residence, birthplace and religious denomination of the parents of such children so admitted, as nearly as the same can be reasonably ascertained; and whenever any such child shall leave such institution, the proper entry shall be made in such record, showing in what manner such child shall have been disposed of, and if apprenticed to or adopted by any person or family, or otherwise placed out at service or on trial, the name and place of residence of the person or head of the family to or with whom such child shall have been so apprenticed, adopted or otherwise placed out. The supreme court may, upon application by a parent, relative or legal guardian of such child, after due notice to the institution and hearing had thereon, by order direct the officers of such institution to furnish such parent, relative or legal guardian with such extracts from such record relating to such child as such court may deem proper. Nothing in this section shall be construed to prevent visitation by relatives and friends in accordance with the established rules of such institutions.

Derivation: L. 1884, ch. 438, § 3, as amended by L. 1894, ch. 54, § 1.

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§ 88. Care and custody of poor children in institutions.

The parent of a poor child, committed to an asylum or other institution by a county superintendent, overseer of the poor, board of charities or other officer, shall not be entitled to the custody thereof, except in pursuance of a judgment or order of a court or judicial officer of competent jurisdiction, adjudging or determining that the interests of such child will be promoted thereby and that such parent is fit, competent and able to duly maintain, support and educate such child. The name of such child shall not be changed while in such asylum or institution.

Derivation: L. 1884, ch. 438, § 4, part.

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ARTICLE 7.

THE ADOPTION OF CHILDREN.

SECTION 110. Definitions; effect of article.
111. Whose consent necessary.
112. Requisites of voluntary adoption.
113. Order.
114. Effect of adoption.
115. Adoption from charitable institutions.
116. Abrogation of voluntary adoption.
117. Application in behalf of child for the abrogation of an adoption from a charitable institution.
118. Application by foster parent for the abrogation of such an adoption.

§ 110. Definitions; effect of article.

Adoption is the legal act whereby an adult person takes another adult person or a minor into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect to such adult or minor. Hereafter, in this article, the person adopting is designated the "foster parent." A voluntary adoption is any other than that of an indigent child, or one who is a public charge from an orphan asylum or charitable institution.

An adult unmarried person, or an adult husband and his adult wife together, may adopt a person of the age of twenty-one years and upwards or a minor in pursuance of this article, and a child shall not hereafter be adopted except in pursuance thereof. Proof of the lawful adoption of a person of the age of twenty-one years and upwards or a minor heretofore made may be received in evidence, and any such adoption shall not be abrogated by the enactment of this chapter and shall have the effect of an adoption hereunder. Nothing in this article in regard to an adopted child inheriting from the foster parents applies to any will, devise or trust made or created before June twenty-fifth, eighteen hundred and seventy-three, or alters, changes or interferes with such will, devise or trust, and as to any such will, devise or trust, a child adopted before that date is not an heir so as to alter estates or trusts or devises in wills so made or created; and nothing in this article in regard to an adult adopted pursuant hereto inheriting from the foster parent applies to any will, devise or trust, made or created before April twenty-second, nineteen hundred and fifteen, alters, changes or interferes with such will, devise or trust, and as to any such will, devise or trust, an adult so adopted is not an heir so as to alter estates or trusts or devises in wills so made or created. (Amended by L. 1915, ch. 352; L. 1917, ch. 149; L. 1920, ch. 433, in effect May 3, 1920.)

Derivation: Domestic Relations Law, § 60.

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§ 111. Whose consent necessary.

Consent to adoption is necessary as follows:

1. Of the minor, if over twelve years of age;

2. Of the foster parent's husband or wife, unless lawfully separated, or unless they jointly adopt such minor;

3. Of the parents or surviving parent of a legitimate child, and of the mother of an illegitimate child; but the consent of a parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery or cruelty, or adjudged to be insane, or to be an habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary; excepting, however, that where such parents are divorced because of his or her adultery or cruelty, notice shall be given to both the parents personally or in such manner as may be directed by a judge of a court of competent jurisdiction.

4. Of a person of full age having lawful custody of the child, if any such person can be found, where the child has no father or mother living, or no father or mother whose consent is necessary under the last subdivision. If such child has no father or mother living, and no person can be found who has the lawful custody of the child, the judge or surrogate shall recite such facts in the order allowing the adoption.

5. Where a minor to be adopted is of the age of eighteen years or upwards, the judge or surrogate may direct, in his discretion, that the consents of the persons referred to in the preceding subdivisions of this section shall be waived, if in his opinion, the moral or temporal interests of such minor will be promoted thereby and such consents cannot, for any reason, be obtained. Where the person to be adopted is of the age of twenty-one years and upwards, the consents of the persons referred to in the preceding subdivisions of this section shall not be required. (Amended by L. 1913, ch. 569; L. 1915, ch. 352, in effect April 22, 1915.)

Derivation: Domestic Relations Law, § 61.

§ 112. Requisites of voluntary adoption.

In adoption the following requirements must be followed:

1. The foster parents or parent, the person to be adopted and all the persons whose consent is necessary under the last section,

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must appear before the county judge or the surrogate of the county where the foster parent or parents reside, or, if the foster parents or parent do not reside in this state, in the county where the minor resides, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate an instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parents or parent to adopt and treat the minor as his, or her or their own lawful child; and a statement of the age of the person to be adopted, as nearly as the same can be ascertained, which statement shall be taken prima facie as true. If a change in the name of the minor is desired, such instrument may also state the new name by which the minor shall be known. The instrument must be signed by the foster parents or parent and by each person whose consent is necessary to the adoption, and severally acknowledged by said persons before such judge or surrogate; but where a parent or person or institution having the legal custody of the minor resides in some other country, state or county, his or their written acknowledged consent, or the written acknowledged consent of the officers of such institution, certified as conveyances are required to be certified to entitle them to record in a county in this state, is equivalent to his or their appearance and execution of such instrument. In all cases where the consents of the persons mentioned in subdivision one, two, three, and four of section one hundred and eleven have been waived as provided in subdivision five of such section, or where the person to be adopted is of the age of twenty-one years or upwards, notice of such application shall be served upon such persons as the judge or surrogate may direct. (Amended by L. 1915, ch. 352; L. 1916, ch. 453, in effect May 29, 1916.)

Derivation: Domestic Relations Law, § 62, as amended by L. 1899, ch. 498, § 1.

§ 113. Order.

If satisfied that the moral and temporal interests of the person to be adopted will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption, reciting the reasons therefor, and directing that the person to be adopted

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shall henceforth be regarded and treated in all respects as the child of the foster parent or parents. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order must also direct that the name of the minor be changed to such name as shall have been designated in the instrument mentioned in the last section. Such order, and the instrument and consent, if any, mentioned in the last section must be filed and recorded in the office of the county clerk of such county. The fact of illegitimacy shall in no case appear upon the record. (Amended by L. 1915, ch. 352; L. 1916, ch. 453, in effect May 29, 1916.)

Derivation: Domestic Relations Law, § 63.

§ 114. Effect of adoption.

Thereafter the parents of the person adopted are relieved from all parental duties toward, and of all responsibility for, and have no rights over such child, or to his property by descent or succession. Where a parent who has procured a divorce, or a surviving parent, having lawful custody of a child, lawfully marries again, or where an adult unmarried person who has become a foster parent and has lawful custody of a child, marries, and such parent or foster parent consents that the person who thus becomes the stepfather or the stepmother of such child may adopt such child, such parent or such foster parent, so consenting, shall not thereby be relieved of any of his or her parental duties toward, or be deprived of any of his or her rights over said child, or to his property by descent or succession. If the order allowing and confirming the adoption shall direct that the name of the child be changed, the child shall be known by the new name designated in such order. His rights of inheritance and succession from his natural parents remain unaffected by such adoption. The foster parent or parents and the person adopted sustain toward each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation, including the right of inheritance from each other, except as the same is affected by the provisions in this section in relation to adoption by a stepfather or stepmother, and such

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right of inheritance extends to the heirs and next of kin of the person adopted, and such heirs and next of kin shall be the same as if he were the legitimate child of the person adopting, but as respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster parent dying without heirs, the person adopted is not deemed the child of the foster parent so as to defeat the rights of remaindermen. (Amended by L. 1915, ch. 352; L. 1916, ch. 453, in effect May 29, 1916.)

Derivation: Domestic Relations Law, § 64, as amended by L. 1897, ch. 408, § 1.

§ 115. Adoption from charitable institutions.

An orphan asylum or charitable institution, incorporated for the care of orphan, friendless or destitute children may place children for adoption and the adoption of every such child, shall, when practicable, be given to persons of the same religious faith as the parents of such child. The adoption shall be effected by the execution of an instrument containing substantially the same provisions as the instrument provided in this article for voluntary adoption, signed and sealed in the corporate name of such corporation by the officer or officers authorized by the directors thereof to sign the corporate name to such instruments, and signed by the foster parent or parents and each person whose consent is necessary to the adoption; and may be signed by the child if over twelve years of age; all of whom shall appear before the county judge or surrogate of the county where such foster parents reside or, if such foster parents do not reside in this state, in the county where such institution is located, and be examined except that such officers need not appear; and such judge or surrogate may thereupon make the order of adoption provided by this article. Such instrument and order shall be filed and recorded in the office of the county clerk of the county where such adoption takes place and the adoption shall take effect from the time of such filing and recording. (Amended by L. 1916, ch. 453; L. 1918, ch. 280, in effect Sept. 1, 1918.)

Derivation: Domestic Relations Law, § 65; L. 1884, ch. 438, § 7, part incorporated.

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§ 116. Abrogation of voluntary adoption.

A person adopted may be deprived of the rights of a voluntary adoption by the following proceedings only:

The foster parent, the person adopted and the persons whose consent would be necessary to an original adoption, must appear before the county judge or surrogate of the county where the foster parent resides, or if the foster parent resides without the state, where the original papers of adoption are on file, or where the natural parent or parents or persons whose consent would be necessary to an original adoption reside, who shall conduct an examination as for an original adoption. If he is satisfied that the abrogation of the adoption is desired by all parties concerned, and will be for the best interests of the person adopted, the foster parent, the person adopted, if over the age of twelve years, and the persons whose consent would have been necessary to an original adoption shall execute an agreement, whereby the foster parent agrees, or whereby the foster parent and person adopted, if the latter is above the age of twelve years and thereby a necessary party as above required, agree to relinquish the relation of parent and child and all rights acquired by such adoption, and the parents or guardian of the person adopted or the institution having the custody thereof agree to reassume such relation. The consent of a foster parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery or cruelty, or adjudged to be insane, or to be an habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary; excepting, however, that where such parents are divorced because of his or her adultery or cruelty, notice shall be given to both the parents personally or in such manner as may be directed by a judge of a court of competent jurisdiction. The judge or surrogate shall indorse, upon such agreement, his consent to the abrogation of the adoption. The agreement and consent shall be filed and recorded in the office of the county clerk of the county where the foster parent resides, and a copy thereof filed and recorded in the office of the county clerk of the county where the parents or guardian reside, or such institution is located, if they reside, or such institution is located, within this state. From the time of the filing and recording thereof, the adoption shall be abrogated, and the person adopted shall

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reassume its original name and the parents or guardian of the person adopted shall reassume such relation. A person so adopted, however, may be adopted directly from such foster parents by another person or by either of such foster parents in the same manner as from parents, and as if such foster parents were the parents of such person so adopted. (Amended by L. 1910, ch. 154; L. 1913, ch. 38; L. 1915, ch. 352; L. 1920, ch. 287, in effect April 21, 1920.)

Derivation: Domestic Relations Law, § 66.

§ 117. Application in behalf of child for the abrogation of an adoption from a charitable institution.

A minor who shall have been adopted in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, or any corporation which shall have been a party to the agreement by which such child was adopted, or any person on the behalf of such child, may make an application to the county judge or the surrogate's court of the county in which the foster parent then resides, or if the foster parent resides without the state, where the original papers of adoption are on file, or where the natural parent or parents or persons whose consent would be necessary to an original adoption reside, for the abrogation of such adoption, on the ground of cruelty, misusage, refusal or necessary provisions or clothing, or inability to support, maintain or educate such child or of any violation of duty on the part of such foster parent toward such child; which application shall be by a petition setting forth the grounds thereof, and verified by the person or by some officer of the corporation making the same. A citation shall thereon be issued by such judge or surrogate, in or out of such court, requiring such foster parent to show cause why the application should not be granted. The provisions of the code of civil procedure relating to the issuing, contents, time and manner of service of citations issued out of a surrogate's court, and to the hearing on the return thereof, and to enforcing the attendance of witnesses, and to all proceedings thereon, and to appeals from decrees of surrogate's courts, not inconsistent with this chapter, shall apply to such citation, and to all proceedings thereon. Such judge or court shall have power to order or compel the production of the person of such minor. If on the proofs made before him, on the hearing on such citation, the judge or surrogate shall deter-

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mine that either of the grounds for such application exists, and that the interests of such child will be promoted by granting the application, and that such foster parent has justly forfeited his right to the custody and services of such minor, an order shall be made and entered abrogating the adoption, and thereon the status of such child shall be the same as if no proceedings had been had for the adoption thereof.

After one such petition against a foster parent has been denied, a citation on a subsequent petition against the same foster parent may be issued or refused in the discretion of the judge or surrogate to whom such subsequent petition shall be made. (Amended by L. 1920, ch. 287, in effect April 21, 1920.)

Derivation: Domestic Relations Law, § 67.

§ 118. Application by foster parent for the abrogation of such an adoption.

A foster parent who shall have adopted a minor in pursuance of this chapter or of any act repealed thereby, from an orphan asylum or charitable institution, may apply to the county judge or surrogate's court of the county in which such foster parent resides, or if the foster parent resides without the state, where the original papers of adoption are on file, or where the natural parent or parents or persons whose consent would be necessary to an original adoption reside, for the abrogation of such adoption on the ground of the wilful desertion of such child from such foster parent, or of any misdemeanor of ill-behavior of such child, which application shall be by petition, stating the grounds thereof, and the substance of the agreement of adoption, and shall be verified by the petitioner; and thereon a citation shall be issued by such judge or surrogate in or out of such court, directed to such child, and to the corporation which was a party to such adoption, or, if such corporation does not then exist, to the superintendent of the poor of such county, requiring them to show cause why such petition should not be granted. Unless such corporation shall appear on the return of such citation, before the hearing thereon shall proceed, a special guardian shall be appointed by such judge or court to protect the interests of such child in such proceeding, and the foster parent shall pay to such special guardian such sum as the court shall direct for the purpose of paying the fees and the necessary disbursements in preparing for and contesting such application on behalf of the child. If such judge or surrogate shall deter-

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mine, on the proofs made before him, on the hearing of such citation, that the child has violated his duty toward such foster parent, and that due regard to the interests of both require that such adoption be abrogated, an order shall be made and entered accordingly; and such judge or court may make any disposition of the child which any court or officer shall then be authorized to make of vagrant, truant or disorderly children. If such judge or surrogate shall otherwise determine, an order shall be made and entered denying the petition. (Amended by **L. 1920, ch. 287, in** effect April 21, 1920.)

Derivation: Domestic Relations Law, § 68.

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ARTICLE 8.

APPRENTICES AND SERVANTS.

SECTION 120. Definitions; effect of article.
121. Contents of indenture.
122. Indenture by minor; by whom signed.
123. Indenture by poor officers; by whom signed.
124. Binding out children by charitable corporation; indenture; by whom signed.
125. Penalty for failure of master or employer to perform provisions of indenture.
126. Assignment of indenture on death of master or employer.
127. Contract with apprentice in restraint of trade void.

§ 120. Definitions; effect of article.

The instrument whereby a minor is bound out to serve as a clerk or servant in any trade, profession or employment, or is apprenticed to learn the art or mystery of any trade or craft, is an indenture.

Every indenture made in pursuance of the laws repealed by this chapter shall be valid hereunder, but hereafter a minor shall not be bound out or apprenticed except in pursuance of this article.

Derivation: Domestic Relations Law, § 70.

§ 121. Contents of indenture.

Every indenture must contain:

1. The names of the parties;

2. The age of the minor as nearly as can be ascertained, which age on the filing of the indenture shall be taken prima facie to be the true age;

3. A statement of the nature of the service or employment to which the minor is bound or apprenticed;

4. The term of service or apprenticeship, stating the beginning and end thereof;

5. An agreement that the minor will not leave his master or employer during the term for which he is indentured;

6. An agreement that suitable and proper board, lodging and medical attendance for the minor during the continuance of the term shall be provided, either by the master or employer, or by the parent or guardian of the apprentice;

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7. A statement of every sum of money paid or agreed to be paid in relation to the service;

8. If such minor is bound as an apprentice to learn the art or mystery of any trade or craft, an agreement on the part of the employer to teach, or cause to be carefully and skilfully taught, to such apprentice, every branch of the business to which such apprentice is indentured, and that at the expiration of such apprenticeship he will give to such apprentice a certificate, in writing, that such apprentice has served at such trade or craft a full term of apprenticeship specified in such indenture;

9. If a minor is indentured by the poor officers of a county, city or town, or by the authorities of an orphan asylum, penal or charitable institution, an agreement that the master or employer will cause such child to be instructed in reading, writing and the general rules of arithmetic, and that at the expiration of the term of service he will give to such minor a new bible.

Every such indenture shall be filed in the office of the county clerk of the county where the master or employer resides.

Derivation: Domestic Relations Law, § 71, as amended by L. 1899, ch. 448, § 1.

§ 122. Indenture by minor; by whom signed.

Any minor may, by the execution of the indenture provided by this article, bind himself or herself:

1. As an apprentice to learn the art or mystery of any trade or craft for a term of not less than three nor more than five years;

2. As a servant or clerk in any profession, trade or employment for a term of service not longer than the minority of such minor, unless such indenture be made by a minor coming from a foreign country, for the purpose of paying his passage, when such indenture may be made for a term of one year although such term may extend beyond the time when such person will be of full age.

An indenture made in pursuance of this section must be signed,

1. By the minor;

2. By the father of the minor unless he is legally incapable of giving consent or has abandoned his family;

3. By the mother of the minor unless she is legally incapable of giving consent;

4. By the guardian of the person of the minor, if any;

5. If there be neither parents nor guardian of the minor legally capable of giving consent, by the county judge of the county, or a

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justice of the supreme court of the district, in which the minor resides; whose consent shall be necessary to the binding out or apprenticing in pursuance of this section of a minor coming from a foreign country or of the child of an Indian woman, in addition to the other consents herein provided;

6. By the master or employer.

Derivation: Domestic Relations Law, § 72.

§ 123. Indenture by poor officers; by whom signed.

The poor officers of a municipal corporation may, by an execution of the indenture provided by this article, bind out or apprentice any minor whose support shall become chargeable to such municipal corporation.

In such case the indenture shall be signed,

1. By the officer or officers binding out or apprenticing the minor;

2. By the master or employer;

3. By the county judge of the county, if the support of such child was chargeable to the county, by two justices of the peace, if chargeable to the town, or by the mayor and aldermen or any two of them, if chargeable to the city.

The poor officers by whom a child is indentured and their successors in office shall be guardians of every such child and shall inquire into the treatment thereof, and redress any grievance as provided by law.

Derivation: Domestic Relations Law, § 73.

§ 124. Binding out children by charitable corporation; indenture; by whom signed.

An orphan asylum or charitable institution, incorporated for the care of orphans, friendless or destitute children, may bind out as an apprentice, clerk or servant, an indigent or poor child by an indenture in writing. Such child must have been absolutely surrendered to the care and custody of such asylum or institution in pursuance of this chapter, or have been placed therein as a poor person, as provided in section fifty-six of the poor law, or have been left to the care of such asylum or institution with no provision by the parent, relative or legal guardian of such child, for its support, for a period of one year then next preceding. Such indenture shall bind such child, if a male, for a period which shall not extend beyond his twenty-first year, and if a female, for a period which shall not extend beyond her eighteenth year. Every

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such child shall, when practicable, be bound out or apprenticed to persons of the same religious faith as the parents of such child. The indenture shall in such case be signed:

1. In the corporate name of such institution by the officer or officers thereof authorized by the directors to sign the corporate name to such instrument, and shall be sealed with the corporate seal;

2. By the master or employer.

Such indenture may also be signed by the child, if over twelve years of age.

Derivation: Domestic Relations Law, § 74; L. 1884, ch. 438, § 5, part incorporated.

§ 125. Penalty for failure of master or employer to perform provisions of indenture.

If a master or employer to whom a minor has been indentured shall fail, during the term of service, to perform any provision of such indenture on his part, such minor or any person in his behalf may bring an action against the master or employer to recover damages for such failure; and if satisfied that there is sufficient cause, the court shall direct such indenture to be canceled, and may render judgment against such master or employer for not to exceed one thousand nor less than one hundred dollars, to be collected and paid over for the use and benefit of such minor to the corporation or officers indenturing such minor, if so indentured, and otherwise to the parents or guardian of the child.

Derivation: Domestic Relations Law, § 75.

§ 126. Assignment of indenture on death of master or employer.

On the death of a master or employer to whom a person is indentured by the poor officers of a municipal corporation, the personal representatives of the master or employer may, with the written and acknowledged consent of such person, assign such indenture and the assignee shall become vested with all the rights and subject to all the liabilities of his assignor, or if such consent be refused, the assignment may be made with like effect by the county judge of the county, on proof that fourteen days' notice of the application therefor has been given to the person indentured, to the officers by whom indentured, and to his parent or guardian, if in the country.

Derivation: Domestic Relations Law, § 76.

§ 127. Contract with apprentice in restraint of trade void.

No person shall accept from any apprentice any agreement or

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cause him to be bound by oath, that after his term of service expires he will not exercise his trade, profession or employment in any particular place; nor shall any person exact from any apprentice, after his term of service expires, any money or other thing, for exercising his trade, profession or employment in any place. Any security given in violation of this section shall be void; and any money paid, or valuable thing delivered, for the consideration, in whole or in part, of any such agreement or exaction, may be recovered by the person paying the same with interest; and every person accepting such agreement, causing such obligation to be entered into, or exacting money or other thing, is also liable to the apprentice in the penalty of one hundred dollars, which may be recovered in a civil suit.

Derivation: Domestic Relations Law, § 77.

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ARTICLE 9.

LAWS REPEALED; WHEN TO TAKE EFFECT.

SECTION 140. Laws repealed.
141. When to take effect.

§ 140. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Derivation: Domestic Relations Law, § 90.

§ 141. When to take effect.

This chapter shall take effect immediately.

Derivation: Domestic Relations Law, § 91.

SCHEDULE OF LAWS REPEALED.

Revised Statutes....Part 2, chapter 1, title 1, sections 5–7
Revised Statutes....Part 2, chapter 8.....All

Laws of	Chapter	Section
1788.....	15.....	1–8
1796.....	20.....	All
1801.....	11.....	1–5, 7, 8, 14
1815.....	221.....	All
1816.....	75.....	All
1818.....	47.....	2
1822.....	206.....	All
1826.....	254.....	All
1828.....	20.....	18 (2d Meet.)
1828.....	21.....	1, ¶¶ 43, 201, 208, 231, 247, 358, 481 (2d Meet.)
1830.....	320.....	24–29
1840.....	80.....	All
1845.....	11.....	All
1848.....	200.....	All
1849.....	375.....	All
1850.....	266.....	All

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Laws of	Chapter	Section
1851.....	321.....	All
1853.....	576.....	All
1855.....	159.....	All
1858.....	187.....	All
1860.....	90.....	All
1862.....	70.....	All
1862.....	172.....	All
1866.....	656.....	All
1870.....	277.....	All
1870.....	431.....	All
1871.....	32.....	All
1871.....	934.....	All
1873.....	25.....	All
1873.....	821.....	All
1873.....	830.....	All
1875.....	522.....	All
1877.....	430.....	All
1878.....	112.....	1, 2
1878.....	300.....	All
1879.....	164.....	All
1879.....	248.....	All
1879.....	321.....	All
1880.....	472.....	All
1881.....	442.....	939, 940
1884.....	381.....	All
1884.....	438.....	All, except § 2 and first sentence of § 4.
1886.....	340.....	All
1887.....	24.....	All
1887.....	77.....	All
1887.....	537.....	All
1887.....	703.....	All
1888.....	78.....	All
1888.....	437.....	All
1888.....	454.....	All
1888.....	485.....	All
1889.....	58.....	All
1889.....	415.....	All
1890.....	51.....	All

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Laws of	Chapter	Section
1892.....	594.....	All
1893.....	175.....	All
1893.....	242.....	All
1893.....	284.....	All
1893.....	601.....	All
1894.....	54.....	All
1895.....	531.....	All
1896.....	272.....	All
1897.....	408.....	All
1897.....	417.....	9, pt. relating to guardians.
1897.....	452.....	All
1899.....	159.....	All
1899.....	448.....	All
1899.....	498.....	All
1899.....	725.....	All
1901.....	339.....	All
1902.....	289.....	All
1902.....	295.....	1, pt. amending L. 1897, Ch. 417, § 9, as to guardians.
1902.....	522.....	All
1903.....	369.....	All
1905.....	495.....	All
1905.....	499.....	All
1907.....	480.....	All
1907.....	669.....	1, pt. amending L. 1897, Ch. 417, § 9, as to guardians.
1907.....	742.....	All
1908.....	73.....	All
Code Civil Procedure		450, from words "and all sums" to "of the wife;" 1206; 1273, last sentence; 1761.

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INDEX TO DOMESTIC RELATIONS LAW.

(REFERENCE IS MADE TO SECTIONS.)

SECTION

ACTIONS:
- by or against married woman 52
- by or against married woman for torts 57
- by married woman for wages 60

ADOPTION OF MINORS AND OTHERS:
- what constitutes 110
- voluntary, what is 110
- whose consent necessary 111
- proceedings relative to 112
- order of court allowing 113
- effect of, upon property rights 114
- from charitable institutions 115
- proceedings to abrogate voluntary 116
- from charitable institution, application of child for abrogation of .. 117
- application of foster parent for 118

ADULT: *See Adoption of Minors and Others.*
- defined 2

ADULTERY:
- marriage after divorce for 8

ANTE-NUPTIAL:
- contracts in full force after marriage 53
- debts, liability of husband for 54

APPRENTICE, CLERK OR SERVANT:
- indenture binding out minor as 120
- contents of indenture 121
- indenture by minor, by whom signed 122
  - by poor officers 123
  - by charitable corporation 124
  - penalty for failure to comply with 125
  - assignment of 126
- contracts with, in restrain of trade 127

ASYLUMS:
- guardianship of indigent children by incorporated orphan asylums 86
- record of children to be kept by orphan asylums 87
- care and custody of poor children in asylums or other institutions 88
- adoption from asylums or charitable institutions 115

Digitized by Google

ASYLUMS.—(Continued). SECTION
application in behalf of child for abrogation of adoption from asylum or charitable institution..... 117
application by foster parent..... 118
binding out children by asylum or charitable institution..... 124

CHILDREN:
written consent of parents to marriage of minor..... 15
effect of marriage of parents of illegitimate..... 24
custody of, writ of habeas corpus to secure.....70, 71
payment of wages to, when valid..... 72
guardians in socage..... 80
appointment of guardians by parents..... 81
powers and duties of such guardians..... 82
duties and liabilities of all general guardians..... 83
guardianship of married woman..... 84
investment of trust funds by guardians..... 85
guardianship of indigent children by asylums..... 86
record of children to be kept by asylums..... 87
care and custody of poor children in asylums..... 88
adoption of, what constitutes..... 110
voluntary adoption, what constitutes..... 110
effect of article as to adoption of..... 110
whose consent necessary..... 111
requisites of voluntary..... 112
order allowing..... 113
effect of..... 114
from charitable institutions..... 115
abrogation of voluntary..... 116
application in behalf of child for abrogation of adoption from charitable institution..... 117
application by foster parent for abrogation of such adoption.. 118
apprentice, indenture binding out minor as..... 120
contents of indenture..... 121
indenture by minor..... 122
by whom signed..... 122
indenture by poor officers..... 123
by whom signed..... 123
binding out children by charitable institution..... 124
indenture..... 124
by whom signed..... 124
penalty for failure of master or employer to perform provisions of indenture..... 125
assignment of indenture on death of master or employer..... 126
contract with apprentice in restraint of trade void..... 127

CITY CLERK:
in cities of first class, duty to solemnize marriages..... 11a
to issue marriage licenses..... 14
duty of..... 15
fees..... 15
records to be kept by..... 19
forms and books to be furnished..... 21
penalty for violation of duty..... 22

Digitized by Google

SECTION

CLERGYMAN:
defined 11
unlawful solemnization of marriage by, a misdemeanor..... 17
duly issued license, protected by..... 18

CONTRACTS:
marriage a civil contract..... 10
power of married woman to contract..... 51
in contemplation of marriage 53
of married woman not to bind husband 55
with apprentice in restraint of trade 127

CONVEYANCE:
by husband or wife to each other..... 56
of property owned by married woman 50, 51

COUNTY CLERK:
records of marriages to be kept by 20
books and forms, how furnished..... 21
penalty for violation of duty 22

DEFINITIONS:
minor 2
adult 2
adoption 110
indenture 120

DIVORCE:
marriage after divorce for adultery..... 8

EVIDENCE:
false statements or affidavits made to procure marriage licenses.. 16
evidence of marriage 23

FEES: *See Marriage License.*

FORMS:
of marriage licenses 14
blanks for, how furnished 21

FOSTER PARENT: *See Adoption of Children.*

GUARDIANS:
of minor, written consent to marriage of 15
in socage, who are 80
testamentary, appointment of, by parent 81
powers of testamentary 82
general, duties and liabilities of 83
guardianship of person, marriage terminates 84
investment of trust funds by..... 85
guardianship of indigent children by incorporated orphan asylums 86
record of children to be kept by orphan asylums..... 87
care and custody of poor children in asylums and other institutions 88

HABEAS CORPUS:
for child detained by parent 70
for child detained by Shakers..... 71

Digitized by Google

SECTION

HUSBAND AND WIFE: *See Children; Guardians; Marriage; Marriage Licenses.*
property of married woman 50
powers of married woman 51
insurance of husband's life 52
contracts in contemplation of marriage 53
liability of husband for ante-nuptial debts 54
contract of married woman not to bind husband 55
may convey to each other 56
may make partition 56
right of action by or against married woman for torts 57
pardon not to restore marital rights 58
compelling transfer of trust property 59
married woman's right of action for wages 60
habeas corpus for child detained by parent 70
guardianship of married woman 84

ILLEGITIMATES:
effect of marriage of parents of 24

INCESTUOUS MARRIAGES:
when incestuous and void 5

INDENTURE: *See Apprentice.*

INSTITUTIONS: *See Asylums.*

INSURANCE:
of husband's life 52

INVESTMENT:
of trust funds by guardian 85

LICENSES: *See Marriage Licenses.*

MARRIAGE: *See Husband and Wife; Marriage Licenses.*
incestuous, what is 5
void, what is 5, 6
voidable, what is 7
after divorce for adultery 8
a civil contract 10
who may solemnize 11
by written contract 11
duty of city clerk in cities of first class to solemnize 11a
ceremony, particular form of, unnecessary 12
how solemnized; exceptions 12
unlawful solemnizaion of, penalty for 17
records of, as evidence 23
effect of, on illegitimates 24
terminates guardianship of person of married woman 84

MARRIAGE LICENSES:
who must obtain 13
where obtained 13
non-residents, where obtained by 13
who shall issue 14
form of 14
fee for 15
penalty for illegal issuance of 15
town or city clerk, duty of, respecting 15
information required by 15

Digitized by Google

SECTION

MARRIAGE LICENSES.—(Continued).
town or city clerk, parents or guardian, written consent of 15
fees for 15
venereal diseases, statement 15
false statements or affidavits in procuring, punishment for 16
solemnization of, without, penalty for 17
when clergyman or officer protected 18
town and city clerk, record to be kept by 19
county clerk, records to be kept by 20
forms and books to be furnished 21
penalty for violation by town, city or county clerk 22
copies of records, as evidence 23
when to be obtained 25
effect of failure to obtain 25

MARRIED WOMAN: *See Husband and Wife.*

MINOR: *See Children.*
defined 2
payment of wages to 72

ORPHAN ASYLUMS: *See Asylums.*

PARDON:
does not restore marital rights 58

PARENTS: *See Children; Guardians.*

PENALTY:
for unlawful solemnization of marriage 17
for false statements or affidavits in obtaining marriage license 16
for misconduct of clerk relating to marriage licenses 22

RECORDS:
to be kept by town and city clerks as to marriage licenses 19
by county clerks 20
of marriage, as presumptive evidence 23
of children to be kept by orphan asylums 87

SERVANTS: *See Apprentice.*

TESTAMENTARY GUARDIANS: *See Guardians.*

TOWN CLERKS:
to issue marriage licenses 14
duty of 15
fees 15
records to be kept by 19
forms and books to be furnished 21
penalty for violation of duty 22

TRUST PROPERTY:
investment of trust funds by guardian 85
compelling transfer of trust property belonging to married woman .. 59

VENEREAL DISEASES:
statement by applicants for marriage license 15

VOID MARRIAGES:
what marriages are 5, 6
what marriages are voidable 7

WAGES:
married woman's right of action for 60
payment of, to minor, when valid 72

WIFE: *See Husband and Wife.*

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LIEN LAW.

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CONSOLIDATORS' NOTE TO TEXT OF LIEN LAW.

The Lien Law contains all provisions of the law as enacted with amendments to date except Art. 9 relating to the conditional sale of goods which has been transferred to the personal property law.

Code Civil Procedure, Ch. 14, Tit. 2, Art. 2, providing for the enforcement of liens on personal property; ch. 23, tit. 3 & 4 providing, respectively, for the enforcement of liens on real property and on vessels have been consolidated in this law.

To the Schedule of repeals has been added the Statutes relating to liens either because heretofore repealed or because recommended for repeal as inactive, obsolete or superseded.

TABLE.

A.

Showing distribution of former Lien Law sections as now found in the Consolidated Lien Law and Personal Property Law.

Former Section	Consolidated Lien Law Section.	Former Section	Consolidated Lien Law Section.
1	1	31	81
2	2	32	82
3	3	33	83
4	4	34	84
5	5	35	85
6	6	40	120
7	7	41	121
8	8	42	122
9	9	43	123
10	10	44	124
11	11	50	140
12	12	51	141
13	13	52	142
14	14	60	160
15	15	61	161
16	17	62	162
17	18	63	163
18	19	70	180
19	20	71	181
20	21	72	182
21	22	73	Repealed
22	23	74	183
23	24	75–No. 1	184
24	25	75–No. 2	185
30	80	80	200

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Former Section	Consolidated Lien Law Section
81	201
82	202
83	203
84	204
85	205
90	230
91	231
92	232
93	233
94	234
95	235
96	236
97	237
98	238
110	Personal Prop. Law—60
111	" " "—61
112	" " "—62
113	" " "—63
114	" " "—64
115	Repealed by L. 1905
116	Personal Prop. Law—65
117	" " "—66
118	" " "—67
120	Lien Law 250
121	Lien Law 251

B.

Showing the provisions of the Session Laws and Code of Civil Procedure which have been consolidated in the Lien Law.

	Consolidated Lien Law Section
L. 1907, Ch. 692 Sec. 1	16
Code Civ. Pro. Sec. 1737	206
" " " " 1738	207
" " " " 1739	208
" " " " 1740	209
" " " " 1741	210
" " " " 3398	40
" " " " 3399	41
" " " " 3400	42
" " " " 3401	43
" " " " 3402	44
" " " " 3403	45
" " " " 3404	46
" " " " 3405	47
" " " " 3406	48
" " " " 3407	49
" " " " 3408	50
" " " " 3409	51
" " " " 3410	52
" " " " 3411	53
" " " " 3412	54
" " " " 3413	55
" " " " 3414	56
" " " " 3415	57
" " " " 3416	58
" " " " 3417	59
" " " " 3418	60
" " " " 3419—pt.	61
" " " " 3419—pt.	85
" " " " 3420	86
" " " " 3421	87
" " " " 3422	88
" " " " 3423	89
" " " " 3424	90
" " " " 3425	91
" " " " 3426	92
" " " " 3427	93
" " " " 3428	94
" " " " 3429	95
" " " " 3430	96
" " " " 3431	97
" " " " 3432	98
" " " " 3433	99
" " " " 3434	100
" " " " 3435	101
" " " " 3436	102
" " " " 3437	103
" " " " 3438	104
" " " " 3439	105
" " " " 3440	106
" " " " 3441	107

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LIEN LAW.*

(L. 1909, CHAP. 38, BEING CHAP. 33 OF THE CONSOLIDATED LAWS IN EFFECT FEB. 17, 1909.)

ARTICLE 1. Short title; definitions (§§ 1, 2).
2. Mechanics' liens (§§ 3–33).
3. Enforcement of liens on real property (§§ 40–64).
4. Liens on vessels and enforcement thereof (§§ 80–107).
5. Liens on monuments, gravestones and cemetery structures (§§ 120–124).
6. Liens for labor on stone (§§ 140–142).
7. Liens for service of stallions or bulls (§§ 160–163).
8. Other liens on personal property (§§ 180–187).
9. Enforcement of liens on personal property (§§ 200–210).
10. Chattel mortgages (§§ 230–238).
11. Laws repealed; when to take effect (§§ 250, 251).

ARTICLE 1.

SHORT TITLE; DEFINITIONS.

SECTION 1. Short title.
2. Definitions.

§ 1. Short title.

This chapter shall be known as the "Lien Law."

Derivation: Lien Law, § 1.

§ 2. Definitions.

Lienor. The term "lienor," when used in this chapter, means any person having a lien upon property by virtue of its provisions, and includes his successor in interest.

Real property. The term "real property," when used in this chapter, includes real estate, lands, tenements and hereditaments, corporeal and incorporeal, fixtures, and all bridges and trestle work, and structures connected therewith, erected for the use of railroads, and all oil or gas wells and structures and fixtures connected therewith, and any lease of oil lands or other right to operate for the production of oil or gas upon such lands, and the right of franchise granted by a municipal corporation for the use of the streets or public places thereof, and all structures placed thereon for the use of such right or franchise.

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* An article known as "3a. Public Works; securing claims for labor and material (§§ 62-66)" was added by L. 1911, ch. 450, but was repealed by L. 1911, ch. 873.

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Owner. The term "owner," when used in this chapter includes the owner in fee of real property, or of a less estate therein, a lessee for a term of years, a vendee in possession under a contract for the purchase of such real property, and all persons having any right, title or interest in such real property, which may be sold under an execution in pursuance of the provisions of statutes relating to the enforcement of liens of judgment, and all persons having any right or franchise granted by a municipal corporation to use the streets and public places thereof, and any right, title or interest in and to such franchise. The purchaser of real property at a statutory or judicial sale shall be deemed the owner thereof, from the time of such sale. If the purchaser at such sale fails to complete the purchase, pursuant to the terms of the sale, all liens created by his consent after such sale shall be a lien on any deposit made by him and not on the real property sold.

Improvement. The term "improvement," when used in this chapter, includes the erection, alteration or repair of any structure upon, connected with, or beneath the surface of, any real property and any work done upon such property or materials furnished for its permanent improvement, and shall also include any work done or materials furnished in equipping any such structure with any chandeliers, brackets or other fixtures or apparatus for supplying gas or electric light and shall also include the drawing by an architect or engineer, of any plans or specifications which are used in connection with such improvement.

Public improvement. The term "public improvement," when used in this chapter, means an improvement upon any real estate belonging to the state or a municipal corporation.

Contractor. The term "contractor," when used in this chapter, means a person who enters into a contract with the owner of real property for the improvement thereof, or with the state or a municipal corporation for a public improvement.

Subcontractor. The term "subcontractor," when used in this chapter, means a person who enters into a contract with a contractor for the improvement of such real property or such public improvement or with a person who has contracted with or through such contractor for the performance of his contract or any part thereof.

Laborer. The term "laborer," when used in this chapter, means any person who performs labor or services upon such improvement.

Material man. The term "material man," when used in this chapter, means any person who furnishes material for such improvement. (Amended by L. 1914, ch. 506; L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 2.

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ARTICLE 2.

MECHANICS' LIENS.

SECTION 3. Mechanic's lien on real property.
4. Extent of lien.
5. Liens under contracts for public improvements.
6. Liens for labor on railroads.
7. Liability of owner for advance payments, collusive mortgages and incumbrances.
8. Terms of contract may be demanded.
9. Contents of notice of lien.
10. Filing of notice.
11. Service of copy of notice.
12. Notice of lien on account of public improvements.
13. Priority of liens.
14. Assignment of lien.
15. Assignments of contracts and orders to be filed.
16. Assignment of contracts and orders for public improvement to be filed.
17. Duration of lien.
18. Duration of lien under contract for a public improvement.
19. Discharge of lien generally.
20. Discharge of lien by payment of money into court.
21. Discharge of lien for public improvement.
22. Building loan contract.
23. Construction of article.
24. Enforcement of mechanic's lien.
25. Priority of liens for public improvements.
26. Subordination of liens after agreement with owner.
27. Subordination of liens after agreement with contractor.
28. Lien of certain judgments postponed.
29. Subordination of liens to subsequent mortgage.
30. Subordination of notices of lis pendens.
31. Discharge of liens on sale of real property.
32. Certain liens and claims not to be affected.
33. Certain sections not to apply to laborers' liens.

§ 3. Mechanic's lien on real property.

A contractor, sub-contractor, laborer or material man, who performs labor or furnishes materials for the improvement of real property with the consent or at the request of the owner thereof, or of his agent, contractor or sub-contractor, shall have a lien for the principal and interest of the value, or the agreed price, of such labor or materials upon the real property improved or to be improved and upon such improvement, from the time of filing a notice of such lien as prescribed in this article.

Derivation: Lien Law, § 3.

§ 4. Extent of lien.

Such lien shall extend to the owner's right, title or interest in

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the real property and improvements, existing at the time of filing a notice of lien, except as hereinafter in this article provided. If an owner assigns his interest in such real property by a general assignment for the benefit of creditors, within thirty days prior to such filing, the lien shall extend to the interest thus assigned. If any part of the real property subjected to such lien be removed by the owner or by any other person, at any time before the discharge thereof, such removal shall not affect the rights of the lienor, either in respect to the remaining real property, or the part so removed. If labor is performed for, or materials furnished to, a contractor or sub-contractor for an improvement, the lien shall not be for a sum greater than the sum earned and unpaid on the contract at the time of filing the notice of lien, and any sum subsequently earned thereon. In no case shall the owner be liable to pay by reason of all liens created pursuant to this article a sum greater than the value or agreed price of the labor and materials remaining unpaid, at the time of filing notices of such liens, except as hereinafter provided. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 4.

§ 5. Liens under contracts for public improvements.

A person performing labor for or furnishing materials to a contractor, his subcontractor or legal representative, for the construction of a public improvement pursuant to a contract by such contractor with the state or a municipal corporation, shall have a lien for the principal and interest of the value or agreed price of such labor or materials upon the moneys of the state or of such corporation applicable to the construction of such improvement, to the extent of the amount due or to become due on such contract, upon filing a notice of lien as prescribed in this article, except as hereinafter in this article provided. (Repealed by L. 1911, ch. 450; re-enacted without change by L. 1911, ch. 873; amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 5, as amended by L. 1902, ch. 37, § 1.

§ 6. Liens for labor on railroads.

Any person who shall hereafter perform any labor for a railroad corporation shall have a lien for the value of such labor upon the railroad track, rolling-stock and appurtenances of such railroad corporation and upon the land upon which such railroad track and appurtenances are situated, by filing a notice of such lien in the office of the clerk of any county wherein any part of such railroad is situated, to the extent of the right, title and interest of such corporation in such property, existing at the time of such filing. The provisions of this article relating to the contents, filing and entry of a notice of a mechanic's lien, and the priority and dura-

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tion thereof, shall apply to such liens. A copy of the notice of such lien shall be personally served upon such corporation within ten days after the filing thereof in the manner prescribed by the code of civil procedure for the service of summons in actions in justices' courts against domestic railroad corporations.

Derivation: Lien Law, § 6.

§ 7. Liability of owner for advance payments, collusive mortgages and incumbrances.

Any payment by the owner to a contractor upon a contract for the improvement of real property, made prior to the time when, by the terms of the contract, such payment becomes due, for the purpose of avoiding the provisions of this article, shall be of no effect as against the lien of a sub-contractor, laborer or material man under such contract, created before such payment actually becomes due. A mortgage, lien or incumbrance made by an owner of real property, for the purpose of avoiding the provisions of this article, with the knowledge or privity of the person in whose favor the mortgage, lien or incumbrance is created, shall be void and of no effect as against a claim on account of the improvement of such real property, existing at the time of the creation of such mortgage, lien or incumbrance.

Derivation: Lien Law, § 7.

§ 8. Terms of contract may be demanded.

A statement of the terms of a contract pursuant to which an improvement of real property is being made, and of the amount due or to become due thereon, shall be furnished upon demand, by the owner, or his duly authorized agent, to a sub-contractor, laborer or material man performing labor for or furnishing materials to a contractor, his agent or sub-contractor, under such contract. If, upon such demand the owner refuses or neglects to furnish such statement or falsely states the terms of such contract or the amount due or to become due thereon, and a sub-contractor, laborer or material man has not been paid the amount of his claim against a contractor or sub-contractor, under such contract, and a judgment has been obtained and execution issued against such contractor or sub-contractor and returned wholly or partly unsatisfied, the owner shall be liable for the loss sustained by reason of such refusal, neglect or false statement, and the lien of such sub-contractor, laborer or material man, filed as prescribed in this article, against the real property improved for the labor performed or materials

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furnished after such demand, shall exist to the same extent and be enforced in the same manner as if such labor and materials had been directly performed for and furnished to such owner.

Derivation: Lien Law, § 8.

§ 9. Contents of notice of lien.

The notice of lien shall state:

1. The name and residence of the lienor; and if the lienor is a partnership or a corporation, the business address of such firm, or corporation, the names of partners and principal place of business, and if a foreign corporation, its principal place of business within the state.

2. The name of the owner of the real property against whose interest therein a lien is claimed, and the interest of the owner as far as known to the lienor.

3. The name of the person by whom the lienor was employed, or to whom he furnished or is to furnish materials; or, if the lienor is a contractor or sub-contractor, the person with whom the contract was made.

4. The labor performed or materials furnished and the agreed price or value thereof, or materials actually manufactured for but not delivered to the real property and the agreed price or value thereof.

5. The amount unpaid to the lienor for such labor or materials.

6. The time when the first and last items of work were performed and materials were furnished.

7. The property subject to the lien, with a description thereof sufficient for identification; and if in a city or village, its location by street and number, if known. A failure to state the name of the true owner or contractor, or a mis-description of the true owner, shall not affect the validity of the lien. The notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 9, as amended by L. 1905, ch. 96, § 1.

§ 10. Filing of notice.

The notice of lien may be filed at any time during the progress of the work and the furnishing of the materials, or within four months after the completion of the contract, or the final performance of the work, or the final furnishing of the materials, dating from the last item of work performed or materials furnished. The notice of lien must be filed in the clerk's office of the county where the

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property is situated. If such property is situated in two or more counties, the notice of lien shall be filed in the office of the clerk of each of such counties. The county clerk of each county shall provide and keep a book to be called the "lien docket," which shall be suitably ruled in columns headed "owners," "lienors," "property," "amount," "time of filing," "proceedings had," in each of which he shall enter the particulars of the notice, properly belonging therein. The date, hour and minute of the filing of each notice of lien shall be entered in the proper column. The names of the owners shall be arranged in such book in alphabetical order. The validity of the lien and the right to file a notice thereof shall not be affected by the death of the owner before notice of the lien is filed. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 10.

§ 11. Service of copy of notice.

At any time after filing the notice of lien, the lienor may serve a copy of such notice upon the owner, if a natural person, by delivering the same to him personally, or if the owner cannot be found, to his agent or attorney, or by leaving it at his last known place of residence in the city or town in which the real property or some part thereof is situated, with a person of suitable age and discretion, or by registered letter addressed to his last known place of residence, or, if such owner has no such residence in such city or town, or can not be found, and he has no agent or attorney, by affixing a copy thereof conspicuously on such property, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon; if the owner be a corporation, said service shall be made by delivering such copy to and leaving the same with the president, vice-president, secretary or clerk to the corporation, the cashier, treasurer or a director or managing agent thereof, personally, within the state, or if such officer cannot be found within the state by affixing a copy thereof conspicuously on such property between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, or by registered letter addressed to its last known place of business. Until service of the notice has been made, as above provided, an owner, without knowledge of the lien, shall be protected in any payment made in good faith to any contractor or other person claiming a lien. A failure to serve the notice does not otherwise affect the validity of such lien. (Amended by L. 1913, ch. 88, in effect March 20, 1913.)

Derivation: Lien Law, § 11.

§ 12. Notice of lien on account of public improvements.

At any time before the construction of a public improvement is completed and accepted by the state or by the municipal corpora-

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tion, and within thirty days after such completion and acceptance, a person performing work for or furnishing materials to a contractor, his sub-contractor, assignee or legal representative, may file a notice of lien with the head of the department or bureau having charge of such construction and with the comptroller of the state or with the financial officer of the municipal corporation, or other officer or person charged with the custody and disbursements of the state or corporate funds applicable to the contract under which the claim is made. The notice shall state the name and residence of the lienor, the name of the contractor or sub-contractor for whom the labor was performed or materials furnished, the amount claimed to be due or to become due, the date when due, a description of the public improvement upon which the labor was performed and materials expended, the kind of labor performed and materials furnished, and materials actually manufactured for but not delivered to such public improvement, and give a general description of the contract pursuant to which such public improvement was constructed. If the lienor is a partnership or a corporation, the notice shall state the business address of such partnership or corporation, the names of the partners, and if a foreign corporation, its principal place of business within the state. If the name of the contractor or sub-contractor is not known to the lienor, it may be so stated in the notice, and a failure to state correctly the name of the contractor or sub-contractor shall not affect the validity of the lien. The notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. The comptroller of the state or the financial officer of the municipal corporation or other officer or person with whom the notice is filed shall enter the same in a book provided for that purpose, to be called the "lien book." Such entry shall include the name and residence of the lienor, the name of the contractor or sub-contractor, the amount of the lien and date of filing, and a brief designation of the contract under which the lien arose.

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(Repealed by L. 1911, ch. 450; re-enacted without change by L. 1911; amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 12, as amended by L. 1902, ch. 37, § 2, and L. 1908, ch. 85, § 1.

§ 13. Priority of liens.

A lien for materials furnished or labor performed in the improvement of real property shall have priority over a conveyance, judgment or other claim against such property not recorded, docketed or filed at the time of the filing of the notice of such lien, except as hereinafter in this article provided; over advances made upon any mortgage or other encumbrance thereon after such filing, except as hereinafter in this article provided; and over the claim of a creditor who has not furnished materials or performed labor upon such property, if such property has been assigned by the owner by a general assignment for the benefit of creditors, within thirty days before the filing of such notice; and also over an attachment hereafter issued or a money judgment hereafter recovered upon a claim, which, in whole or in part, was not for materials furnished, labor performed or moneys advanced for the improvement of such real property; and over any claim or lien acquired in any proceedings upon such judgment. Such liens shall also have priority over advances made upon a contract by an owner for an improvement of real property which contains an option to the contractor, his successor or assigns to purchase the property, if such advances were made after the time when the labor began or the first item of material was furnished, as stated in the notice of lien. If several buildings are erected, altered or repaired, or several pieces or parcels of real property are improved, under one contract, and there are conflicting liens thereon, each lienor shall have priority upon the particular building or premises where his labor is performed or his materials are used. Persons shall have priority according to the date of filing their respective liens except as hereinafter in this article provided; but in all cases laborers for daily or weekly wages shall have preference over all other claimants under this article, without reference to the time

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when such laborers shall have filed their notice of liens. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 13.

§ 14. Assignment of lien.

A lien, filed as prescribed in this article, may be assigned by a written instrument signed and acknowledged by the lienor, at any time before the discharge thereof. Such assignment shall contain the names and places of residence of the assignor and assignee, the amount of the lien and the date of filing the notice of lien, and be filed in the office where the notice of the lien assigned is filed. The facts relating to such an assignment and the names of the assignee shall be entered by the proper officer in the book where the notice of lien is entered and opposite the entry thereof. Unless such assignment is filed, the assignee need not be made a defendant in an action to foreclose a mortgage, lien or other incumbrance. A payment made by the owner of the real property subject to the lien assigned or by his agent or contractor, or by the contractor of a municipal corporation, to the original lienor, on account of such lien, without notice of such assignment and before the same is filed, shall be valid and of full force and effect. Except as prescribed herein, the validity of an assignment of a lien shall not be affected by a failure to file the same.

Derivation: Lien Law, § 14.

§ 15. Assignments of contracts and orders to be filed.

No assignment of a contract for the performance of labor or the furnishing of materials for the improvement of real property or of the money or any part thereof due or to become due therefor, nor an order drawn by a contractor upon the owner of such real property for the payment of such money, nor an order drawn by a subcontractor upon a contractor or subcontractor for such payment, nor an order drawn by an owner upon the maker of a building loan, nor an assignment of moneys due or to grow due under a building loan contract, shall be valid, unless the contract (other that a building loan contract) or a statement containing the sub-

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stance thereof, and such assignment or a copy of each or a copy of such order, be filed within ten days after the date of such assignment of contract, or such assignment of money, or such order, in the office of the county clerk of the county wherein the real property improved or to be improved is situated, and in case of a contract with a municipal corporation, also with the comptroller or chief fiscal officer thereof, and such contract, assignment or order shall have effect and be enforceable from the time of such filing, and no such assignment or order shall have any validity until the same shall have been so filed. Such clerk shall enter the facts relating to such assignment or order in the "lien docket" or in another book provided by him for such purpose. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 15, as amended by L. 1907, ch. 360, § 1.

§ 16. Assignment of contracts and orders for public improvement to be filed.

No assignment of a contract for the performance of labor or the furnishing of materials for a public improvement, or of the money, or any part thereof, due, or to become due, therefor, nor an order drawn by the contractor or subcontractor upon the municipal corporation, or the head of the department or bureau having charge of the construction of such public improvement, or the financial officer of the municipal corporation, or other officer or person charged with the custody and disbursement of the corporate funds applicable to the contract for such public improvement, shall be valid unless such assignment or order, or a copy thereof, be filed within ten days after the date of such assignment of contract, or such assignment of money, or such order, with the head of the department or bureau having charge of such construction, and with the financial officer of the municipal corporation or other officer or person charged with the custody and disbursement of the corporate funds applicable to the contract for such public improvement, and such assignment or order shall have effect and be enforceable from the time of such filing, and no such assignment or order shall have any validity until the same shall have been so filed. The financial officer of the

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municipal corporation, or other officer or person with whom the assignment order, or copy thereof, is filed, shall enter the facts relating to the same in the lien book or other book provided for such purpose. (Repealed by L. 1911, ch. 450; re-enacted without change by L. 1911, ch. 873; amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 15a, added by L. 1907, ch. 692, § 1.

§ 17. Duration of lien.

No lien specified in this article shall be a lien for a longer period than one year after the notice of lien has been filed, unless within that time an action is commenced to foreclose the lien, and a notice of the pendency of such action, whether in a court of record or in a court not of record, is filed with the county clerk of the county in which the notice of lien is filed, containing the names of the parties to the action, the object of the action, a brief description of the real property affected thereby, and the time of filing the notice of lien; or unless an order be granted within one year from the filing of such notice by a court of record or a judge or justice thereof, continuing such lien, and such lien shall be redocketed as of the date of granting such order and a statement made that such lien is continued by virtue of such order. No lien shall be continued by such order for more than one year from the granting thereof, but a new order and entry may be made in each successive year. If a lienor is made a party defendant in an action to enforce another lien, and the plaintiff of such defendant has filed a notice of the pendency of the action within the time prescribed in this section, the lien of such defendant is thereby continued. Such action shall be deemed an action to enforce the lien of such defendant lienor. The failure to file a notice of pendency of action shall not abate the action as to any person liable for the payment of the debt specified in the notice of lien, and the action may be prosecuted to judgment against such person. The provisions of this section in regard to continuing liens shall apply to liens discharged by deposit or by order on the

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filing of an undertaking. Where a lien is discharged by deposit or by order, a notice of pendency of action shall not be filed. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 16.

§ 18. Duration of lien under contract for a public improvement. If the lien is for labor done or materials furnished for a public improvement, it shall not continue for a longer period than three months from the time of filing the notice of such lien, unless an action is commenced to foreclose such lien within that time, and a notice of the pendency of such action is filed with the comptroller of the state or the financial officer of the municipal corporation with whom the notice of such lien was filed, or unless an order be made by a court of record, continuing such lien, and a new docket be made stating such fact. And the supreme court of this state, or any justice thereof, or the county court of the county in which such lien was filed, or the county judge of such county, are hereby authorized to make an order continuing any such liens for a period not exceeding six months, upon the application of a lienor upon such affidavits or evidence as in the opinion of such court or judge shall be deemed sufficient. Nothing in this section contained, however, shall prevent any such court or judge from making a new order continuing such lien in each succeeding six months, if in the discretion of such court or judge the same shall be deemed just and equitable. If a lienor be made a party defendant in an action to enforce another lien, and the plaintiff or such defendant has filed a notice of the pendency of the action within the time prescribed in this section, the lien of such defendant is thereby continued. The provisions of this section in regard to continuing liens shall apply to liens discharged by deposit or by order on the filing of an undertaking, but in such cases no redocketing shall be necessary, but on the original docket an entry shall be made of the continuance by such order. This section is hereby declared to be a remedial statute and is to be construed liberally to secure the beneficial interests and purposes thereof. (Repealed by L.

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1911, ch. 450; re-enacted by L. 1911, ch. 873; amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 17, as amended by L. 1899, ch. 25, § 1, and L. 1902, ch. 37, § 3, also L. 1899, ch. 25, § 3.

§ 19. Discharge of lien generally.

A lien other than a lien for labor performed or materials furnished for a public improvement specified in this article, may be discharged as follows:

1. By the certificate of the lienor, duly acknowledged or proved and filed in the office where the notice of lien is filed, stating that the lien is satisfied and may be discharged.

2. By failure to begin an action to foreclose such lien or to secure an order continuing it, within one year from the time of filing the notice of lien, unless an action be begun within the same period to foreclose a mortgage or another mechanic's lien upon the same property or any part thereof and a notice of pendency of such action is filed according to law.

3. By order of the court vacating or cancelling such lien of record, for neglect of the lienor to prosecute the same granted pursuant to section fifty-nine of this chapter.

4. Either before or after the beginning of an action by the owner or contractor executing an undertaking with two or more sufficient sureties, who shall be freeholders, to the clerk of the county where the premises are situated, in such sums as the court or a judge or justice thereof may direct, not less than the amount claimed in the notice of lien conditioned for the payment of any judgment which may be rendered against the property for the enforcement of the lien. The sureties must together justify in at least double the sum named in the undertaking. A copy of the undertaking, with notice that the sureties will justify before the court, or a judge or justice thereof, at the time and place therein mentioned, must be served upon the lienor or his attorney, not less than five days before such time. Upon the approval of the undertaking by the court, judge or justice an order shall be made by such court, judge or justice discharging such lien. The execution of any such bond or undertaking by any fidelity or surety

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company authorized by the laws of this state to transact business, shall be equivalent to the execution of said bond or undertaking by two sureties; and where a certificate of solvency has been issued by the superintendent of insurance under the provisions of section one hundred and eighty-one of the insurance law, and has not been revoked, no justification or notice thereof shall be necessary, and in such case a copy of the undertaking and notice of the application for an order to discharge the lien must be served upon the lienor or his attorney not less than two days before such application for such order is made. Any such company may execute any such bond or undertaking as surety by the hand of its officers, or attorney, duly authorized thereto by resolution of its board of directors, a certified copy of which resolution, under the seal of said company, shall be filed with each bond or undertaking. If the lienor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of said undertaking and notice at the lienor's place of residence, or if a corporation at its principal place of business within the state as stated in the notice of lien, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said notice of lien and is not known, then in such manner as the court may direct. The premises, if any, described in the notice of lien as the lienor's residence or place of business shall be deemed to be his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary.

5. Upon filing in the office of the clerk of the county where the property is situated, a transcript of a judgment of a court of competent jurdisdiction, together with due proof of service of due notice of entry thereof, showing a final determination of the action in favor of the owner of the property against which the lien was claimed. (Amended by L. 1909, chs. 240, 427; L. 1916, ch. 507; L. 1920, ch. 373, in effect April 28, 1920.)

Derivation: Lien Law, § 18, as amended by L. 1908, ch. 254, § 1. Amended by L. 1909, ch. 427.

§ 20. Discharge of lien by payment of money into court.

A lien specified in this article, other than a lien for performing labor or furnishing materials for a public improvement, may be discharged, at any time before an action is commenced to foreclose such lien, by depositing with the county clerk, in whose office the notice of lien is filed, a sum of money equal to the amount claimed

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in such notice, with interest to the time of such deposit. After such action is commenced the lien may be discharged by a payment into court of such sum of money, as, in the judgment of the court or a judge or justice thereof, after at least five days' notice to all the parties to the action, will be sufficient to pay any judgment which may be recovered in such action. Upon any such payment, the county clerk shall forthwith enter upon the lien docket and against the lien for the discharge of which such moneys were paid, the words " discharged by payment." A deposit of money made as prescribed in this section shall be repaid to the party making the deposit, or his successor, upon the discharge of the liens against the property pursuant to law. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of the code of civil procedure relative to the payment of money into court and the surrender of such money by order of the court. An order for the surrender of such moneys may be made by any court of record having jurisdiction of the parties and of the subject matter of the proceeding for the foreclosure of the lien for the discharge of which such moneys were deposited. If no action is brought in a court of record to enforce such lien, such order may be made by any judge of a court of record.

Derivation: Lien Law, § 19.

§ 21. Discharge of lien for public improvement.

A lien against the amount due or to become due a contractor from the state or a municipal corporation for the construction of a public improvement may be discharged as follows:

1. By filing a certificate of the lienor or his successor in interest, duly acknowledged and proved, stating that the lien is discharged.

2. By lapse of time, when three months have elapsed since filing the notice of lien, and no action has been commenced to enforce the lien.

3. By satisfaction of a judgment rendered in an action to enforce the lien.

4. By the contractor depositing with the comptroller of the state or the financial officer of the municipal corporation, or the

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officer or person with whom the notice of lien is filed, such a sum of money as is directed by a justice of the supreme court, which shall not be less than the amount claimed by the lienor, with interest thereon for the term of one year from the time of making such deposit, and such additional amount as the justice deems sufficient to cover all costs and expenses. The amount so deposited shall remain with the comptroller or such financial officer or other officer or person until the lien is discharged as prescribed in subdivision one, two or three of this section.

5. Either before or after the beginning of an action by a contractor executing an undertaking with two or more sufficient sureties, who shall be freeholders, to the state or the municipal corporation with which the notice of lien is filed, in such sums as the court or a judge or justice thereof may direct, not less than the amount claimed in the notice of lien, conditioned for the payment of any judgment which may be recovered in an action to enforce the lien. The sureties must together justify in at least double the sum named in the undertaking. A copy of the undertaking with notice that the sureties will justify before the court or a judge or justice thereof at the time and place therein mentioned must be served upon the lienor, not less than five days before such time. If the lienor cannot be found, such service may be made as prescribed in subdivision four of section nineteen of this article. Upon the approval of the undertaking by the court, judge or justice, an order shall be made discharging such lien. The execution of such undertaking by any fidelity or surety company authorized by the laws of this state to transact business shall be equivalent to the execution of such an undertaking by two sureties, and where a certificate of solvency has been issued by the superintendent of insurance under the provisions of section one hundred and eighty-one of the insurance law and has not been revoked, no justification or notice thereof shall be necessary, and in such case a copy of the undertaking and notice of the application for an order to discharge the lien must be served upon the lienor, or his attorney, not less than two days before such application for such order is made. Any such company may execute such under-

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taking as surety by the hand of its officers or attorney duly authorized thereto by resolution of its board of directors, a certified copy of which resolution under the seal of such company, shall be filed with each undertaking. Except as otherwise provided herein the provisions of article five of title six of chapter eight of the code of civil procedure are applicable to an undertaking given for the discharge of a lien on account of public improvements. If the lienor cannot be found or does not appear by attorney then such service may be made as prescribed in subdivision four of section nineteen of this chapter for the service of an undertaking with notice of justification of sureties. (Repealed by L. 1911, ch. 450; re-enacted by L. 1911, ch. 873; amended by L. 1914, ch. 266; L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 20, as amended by L. 1898, ch. 169, § 1; L. 1902, ch. 37, § 4, and L. 1908, ch. 254, § 2.

§ 22. Building loan contract.

A contract for a building loan, either with or without the sale of land, and any modification thereof, must be in writing and duly acknowledged, and within ten days after its execution be filed in the office of the clerk of the county in which any part of the land is situated, and the same shall not be filed in the register's office of any county. If not so filed the interest of each party to such contract in the real property affected thereby, is subject to the lien and claim of a person who shall thereafter file a notice of lien under this chapter. A modification of such contract shall not affect or impair the right or interest of a person, who, previous to the filing of such modification had furnished or contracted to furnish materials, or had performed or contracted to perform labor for the improvement of real property, but such right or interest shall be determined by the original contract. The county clerk is entitled to a fee of twenty cents for filing such a contract or modification. Such contracts and modifications thereof shall be indexed in a book provided for that purpose, in the alphabetical order of the names of the persons to whom such loans shall be made. No assignment of the moneys due or to become due under a contract for a building loan, under the provisions of section

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twenty-six of this article, nor any payment to the holders of such assignment, shall be or be construed to be a modification of a contract for a building loan within the meaning of this section, and the execution and delivery of a bond and mortgage, under the provisions of section twenty-six of this article, or payments thereunder shall not be or be construed to be the making of a contract for a building loan within the meaning of this section. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 21, as amended by L. 1900, ch. 78, § 1.

§ 23. Construction of article.

This article is to be construed liberally to secure the beneficial interests and purposes thereof. A substantial compliance with its several provisions shall be sufficient for the validity of a lien and to give jurisdiction to the courts to enforce the same.

Derivation: Lien Law, § 22.

§ 24. Enforcement of mechanic's lien.

The mechanics' liens specified in this article may be enforced against the property specified in the notice of lien and which is subject thereto and against any person liable for the debt upon which the lien is founded, as prescribed in article three of this chapter.

Derivation: Lien Law, § 23.

§ 25. Priority of liens for public improvements.

Persons having liens under contracts for public improvements shall have priority according to the date of filing their respective liens, except as in this article hereinafter provided, but in all cases laborers for daily or weekly wages shall have preference over all other lienors having liens arising under the same contracts pursuant to this article, without reference to the time when such laborers shall have filed their notice of lien. All liens shall have priority over advances made after the filing thereof, upon any assignment of the moneys, or any part thereof, due or to become due under such contract, or upon any order drawn by the contractor for the payment of such moneys, or any part thereof; but

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this provision shall not relate to advances made under an assignment to one or more persons or a corporation as trustee or trustees to which approval has been given as provided in section twenty-seven of this chapter. (Repealed by L. 1911, ch. 450; re-enacted by L. 1911, ch. 873; amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Lien Law, § 24, added by L. 1898, ch. 169, § 2.

§ 26. Subordination of liens after agreement with owner.

In case an owner of real property shall execute to one or more persons, or a corporation, as trustee or trustees, a bond and mortgage affecting such property in whole or in part, or an assignment of the moneys due or to become due under a contract for a building loan in relation to such property, and in case such mortgage, if any, shall be recorded in the office of the register of the county where such real property is situated, or if such county has no register than in the office of the clerk of such county, and in case such assignment, if any, shall be filed in the office of the clerk of the county where such real property is situated; and in case lienors having mechanic's liens against said real property, or any part thereof, filed up to and not later than fifteen days after the recording of such mortgage or the filing of such assignment, and which liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, approve such bond and mortgage, if any, and such assignment, if any, by an instrument or instruments in writing, duly acknowledged and filed in the office of such county clerk, then all mechanic's liens affecting such property or any part thereof, whether theretofore or thereafter filed and which have not been discharged as in this article provided, shall be subordinate to the lien of such trust bond and mortgage to the extent of the aggregate amount of all certificates of interest therein issued by such trustee or trustees, or their successors for moneys loaned, materials furnished, labor performed and any other indebtedness incurred after said trust mortgage shall have been recorded, and for expenses in

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connection with said trust mortgage, and shall also be subordinate to the lien of the bond and mortgage given to secure the amount agreed to be advanced under such contract for a building loan to the extent of the amount which shall be advanced by the holder of such bond and mortgage to the trustee or trustees, or their successors, under such assignment and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens, and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property, shall be subordinate to the mechanics' liens filed prior thereto. The provisions of this section shall apply to all bonds and mortgages and all assignments of moneys due, or to become due under contracts for building loans, executed by such owner, in like manner, and recorded or filed, from time to time as hereinbefore provided. In case of an assignment to trustees under the provisions of this section, the trustees and their successors shall be the agents of the assignor to receive and receipt for any and all sums advanced by the holder of the building loan bond and mortgage under the building loan contract and such assignment. No lienor shall have any priority over the bond and mortgage given to secure the money agreed to be advanced under a building loan contract or over the advances made thereunder, by reason of any act preceding the making and approval of such assignment. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 27. Subordination of liens after agreement with contractor.

In case a contractor shall execute to one or more persons, or a corporation, as trustee or trustees, an assignment in writing of the moneys due and to grow due under his contract with the owner of real property, or with the state, or with a municipal corporation, and in case such assignment is filed in the office of the clerk of the county where such real property is situated, or with the

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comptroller of the state, or with the financial officer of the municipal corporation; and in case lienors having mechanic's liens against said real property, or any part thereof, or upon the moneys of the state or of such municipal corporation applicable to the construction of the public improvement, and which liens are also against such contractor or any subcontractor under him, filed up to and not later than fifteen days after the filing of such assignment, and which liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, approve such assignment by an instrument or instruments in writing, duly acknowledged, and filed in the office or offices where such assignment shall have been filed as hereinbefore provided, then all such mechanic's liens affecting such property or any part thereof, or such moneys of the state, or of such municipal corporation, whether theretofore or thereafter filed and which liens have not been discharged as in this article provided shall be subordinate to such assignment and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property or such public improvement, shall be subordinate to the mechanics' liens filed prior thereto. Such assignment, however, shall be valid only for an amount equal to the aggregate amount which may be paid or incurred by the trustee or trustees, or their successors, in completing such contract. The certificate in writing of such trustee or trustees or their successors, to the owner, or to the state, or to such municipal corporation, certifying the amount paid or incurred by him or them toward the completion of such contract shall be final and conclusive. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

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§ 28. Lien of certain judgments postponed.

Upon the filing of the written instrument or instruments of approval under section twenty-six or twenty-seven of this article, the lien of all money judgments and attachments affecting such real property, or the moneys due under a contract, and all claims and liens acquired in any proceedings upon any money judgment, shall be subordinate in like manner and to like extent as provided in said sections, respectively, for the subordination of mechanic's liens, and in that case all money judgments recovered upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property or for the public improvement, shall thenceforth be of equal priority with all mechanic's liens on such property, or on the moneys applicable to the construction of such public improvement, filed prior to the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property or the moneys applicable to the construction of such public improvement; and any attachment issued or money judgment recovered upon a claim, which, in whole or in part, was not for materials furnished, labor performed or moneys advanced for the improvement of such real property or for the public improvement, shall be subordinate to all mechanic's liens thereon and shall also be subordinate to all judgments recovered upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 29. Subordination of liens to subsequent mortgage.

In case an owner of real property against which, or any part of which, mechanic's liens have been filed, desires to obtain a loan by executing and delivering a bond and mortgage affecting such real property, or any part thereof, as security therefor, and in case lienors having mechanic's liens against such real property, or any part thereof, filed prior to the recording of such mortgage, and which said liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, by an instrument or instruments in writing, duly acknowledged,

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designate and authorize one or more persons to consent to the execution and delivery of such bond and mortgage, and in case the consent in writing, duly acknowledged, of such person or persons to the execution and delivery of such bond and mortgage shall be filed in the office of the clerk of the county where such real property is situated, together with such instrument or instruments of designation, then all mechanic's liens affecting such real property, or any part thereof, whether theretofore or thereafter filed, shall be subordinate to the lien of such bond and mortgage to the extent of the full amount which shall be advanced thereunder and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens, and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property, shall be subordinate to the mechanics' liens filed prior thereto. In case such person or person so designated and authorized shall so consent to the execution and delivery of such bond and mortgage but on condition that a sum of money be deposited with the clerk of such county, and such sum is so deposited, the county clerk, upon such payment, shall forthwith enter upon the lien docket, indexed to the name of the owner, the facts relating to such payment. A deposit of money made as prescribed in this section shall be repaid to such owner or his assignee upon the discharge or release of all mechanic's liens, judgments and attachments against the property. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of the code of civil procedure relative to the payment of money into court and the surrender of such money by order of the court. The court shall in any action brought to foreclose any of such liens, or in any action brought to recover such deposit or any part thereof, direct the payment of such sum so deposited to the persons whose mechanic's liens,

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judgments, or claims secured by attachments shall have been established on the trial and the amount so paid shall be credited upon such mechanic's liens, judgments and claims. Upon such filing of such consent, as hereinbefore provided, the lien of all judgments and attachments affecting such real property and all claims and liens acquired in any proceedings upon such judgments shall be subordinate in like manner and to like extent as hereinbefore in this section provided for the subordination of mechanic's liens, and in that case all judgments recovered upon, and attachments issued upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property shall thenceforth be of equal priority with all mechanic's liens on such property filed prior to the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property; and any attachment issued or judgment recovered upon a claim, which, in whole or in part, is not for materials furnished, labor performed or moneys advanced for the improvement of such property shall be subordinate to all mechanic's liens thereon, and shall also be subordinate to all judgments recovered upon and attachments issued upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 30. Subordination of notices of lis pendens.

In case of subordination pursuant to the provisions of sections twenty-six, twenty-seven, twenty-eight or twenty-nine of this article all actions and proceedings upon such mechanic's liens and all notices of pendency of actions in any action brought to foreclose the same and all proceedings upon judgments and attachments, shall be subordinate in like manner and to like extent as provided in said sections, respectively, for the subordination of mechanic's liens, judgments and attachments. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 31. Discharge of liens on sale of real property.

In case an owner of real property against which, or any part of which, mechanic's liens have been filed, desires to convey or trans-

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fer an interest in such real property or any part thereof, and in case lienors having mechanic's liens against such real property, or any part thereof, filed prior to the making of the deposit hereinafter in this section mentioned, and which said liens have not been discharged as in this article provided, shall, to the extent of at least seventy-five per centum of the aggregate amount for which such liens have been so filed, by an instrument or instruments in writing, duly acknowledged, designate and authorize one or more persons to consent to the execution and delivery of a deed or deeds conveying said real property or any part thereof, and in case the consent in writing, duly acknowledged, of such person or persons to the execution and delivery of such deed or deeds, and which said consent shall be conditioned for the deposit of a specified sum of money with the clerk of such county, shall be filed in the office of the clerk of the county where such real property is situated, together with such instrument or instruments of designation, then on the deposit of such specified sum with such county clerk all mechanic's liens, judgments and attachments, and all claims and liens acquired in any proceeding upon such judgments or under such attachments against such real property shall from the time of such deposit cease to be liens or encumbrances upon such real property, and such real property shall thenceforth be free and discharged from the same, and the same shall thenceforth be liens upon such sum so deposited and from the date of the filing of such approval the respective mechanics' lienors, except those whose liens have been discharged as in this article provided, shall have no priority over each other with respect of their several liens, and their liens shall thenceforth be of equal priority, except that from the date of the filing of such approval all liens filed subsequent to the day preceding the day on which is commenced a trial in a court of record of an action to foreclose or enforce a mechanic's lien affecting such real property, shall be subordinate to the mechanics' liens filed prior thereto, and said county clerk upon such deposit being made shall forthwith enter upon the lien docket indexed to the name of such owner the facts relating to such deposit. A deposit

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of money made as prescribed in this section shall be repaid to such owner or his assignee upon the discharge or release of all such mechanic's liens, judgments and attachments. All deposits of money made as provided in this section shall be considered as paid into court and shall be subject to the provisions of the code of civil procedure relative to the payment of money into court and the surrender of such money by order of the court. The court shall in any action brought to foreclose any of such liens or in any action brought to recover such deposit or any part thereof, direct the payment of such sum so deposited to the persons whose mechanic's liens, judgments, or claims secured by attachment shall have been established upon the trial, and the amount so paid shall be credited upon such mechanic's liens, judgments and claims. Upon such deposit being made as hereinbefore provided the lien of all judgments and attachments affecting such real property, and all claims and liens acquired in any proceedings upon such judgments or under attachments shall be liens upon such deposit of equal priority with such mechanic's liens, except that all judgments recovered upon and attachments issued upon a claim which, in whole or in part, is not for materials furnished, labor performed or moneys advanced for the improvement of such real property, shall be subordinate as a lien upon such sum so deposited to all mechanic's liens thereon, and shall also be subordinate to all judgments recovered upon and attachments issued upon claims for materials furnished, labor performed or moneys advanced for the improvement of such real property. In case such consent shall be conditioned also for the giving to one or more persons or a corporation as trustee or trustees any other property real or personal then any cash thereafter from time to time tendered by such trustee or trustees to such county clerk shall be received and held by such county clerk as though the same were part of the specified sum of money for the deposit of which such consent was conditioned, and for the same purposes and subject to the same provisions as in this section provided therefor. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

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§ 32. Certain liens and claims not to be affected.

The amendments contained in this act except section sixty-four shall not apply to mechanic's liens, attachments, judgments, or to claims or liens acquired in any action or proceeding upon such mechanic's liens, attachments or judgments, filed, docketed, entered or obtained prior to the date when this article, as amended, takes effect. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 33. Certain sections not to apply to laborers' liens.

None of the provisions contained in sections twenty-six, twenty-seven, twenty-eight, twenty-nine and thirty-one of this article shall apply to liens of laborers for daily or weekly wages. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

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ARTICLE 3.

ENFORCEMENT OF LIENS ON REAL PROPERTY.

SECTION 40. Construction of article.
41. Enforcement of a mechanic's lien on real property.
42. Enforcement of a lien under contract for a public improvement.
43. Action in a court of record; consolidation of actions.
44. Parties to an action in a court of record.
45. Equities of lienors to be determined.
46. Action in a court not of record.
47. How summons served, when personal service cannot be made.
48. Proceedings on return of summons; answer; judgment by default.
49. Issue, how tried; judgment.
50. Execution.
51. Appeals from judgments in courts not of record.
52. Transcripts of judgments in courts not of record.
53. Costs and disbursements.
54. Judgment in case of failure to establish lien.
55. Offer to pay money into court, or to deposit securities, in discharge of the lien.
56. Preference over contractors.
57. Judgment may direct delivery of property in lieu of money.
58. Judgment for deficiency.
59. Vacating of a mechanic's lien, by order of court.
60. Judgment in action to foreclose lien on account of public improvement.
61. Judgment in action to foreclose a mechanic's lien on property of a railroad corporation.
62. Bringing in new parties.
63. Service of answer on state or municipal corporation.
64. Award of personal judgment by court or referee.

§ 40. Construction of article.

This article is to be construed in connection with article two of this chapter, and provides proceedings for the enforcement of liens for labor performed and materials furnished in the improvement of real property, created by virtue of such article.

Derivation: Code Civil Procedure, § 3398.

§ 41. Enforcement of a mechanic's lien on real property.

A mechanic's lien on real property may be enforced against such property, and against a person liable for the debt upon which the lien is founded, by an action, by the lienor, his assignee or legal

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representative, in a court which has jurisdiction in an action founded on a contract for a sum of money equivalent to the amount of such debt.

Derivation: Code Civil Procedure, § 3399.

§ 42. Enforcement of a lien under contract for a public improvement.

A lien for labor done or materials furnished for a public improvement may be enforced against the funds of the state or the municipal corporation for which such public improvement is constructed, to the extent prescribed in article two of this chapter, and against the contractor or sub-contractor liable for the debt, by a civil action, in the same court and in the same manner as a mechanic's lien on real property. (Repealed by L. 1911, ch. 450; re-enacted by L. 1911, ch. 873, in effect Oct. 6, 1911.)

Derivation: Code Civil Procedure, § 3400.

§ 43. Action in a court of record; consolidation of actions.

The provisions of the code of civil procedure, relating to actions for the foreclosure of a mortgage upon real property, and the sale and the distribution of the proceeds thereof apply to actions in a court of record, to enforce mechanics' liens on real property, except as otherwise provided in this article. If actions are brought by different lienors in a court of record, the court in which the first action was brought, may, upon its own motion, or upon the application of any party in any of such actions, consolidate all of such actions.

Derivation: Code Civil Procedure, § 3401.

§ 44. Parties to an action in a court of record.

In an action in a court of record the following are necessary parties defendant:

1. All lienors having liens against the same property or any part thereof.

2. All other persons having subsequent liens or claims against the property, by judgment, mortgage or otherwise, and

3. All persons appearing by the records in the office of the county clerk or register to be overseers of such property or any part thereof. Every defendant who is a lienor shall, by answer in the action, set forth his lien, or he will be deemed to have waived the same, unless the lien is admitted in the complaint, and not contested by another defendant. Two or more lienors having liens upon the same property or any part thereof, may join as plaintiffs.

4. The state, in the same manner as a private person, when the

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lien is one filed against funds of the state for which public improvement is constructed. In such a case, the summons must be served upon the attorney-general, who must appear in behalf of the people.

Derivation: Code Civil Procedure, § 3402.

§ 45. Equities of lienors to be determined.

The court may adjust and determine the equities of all the parties to the action and the order of priority of different liens, and determine all issues raised by any defense or counterclaim in the action.

Derivation: Code Civil Procedure, § 3403.

§ 46. Action in a court not of record.

If an action to enforce a mechanic's lien against real property is brought in a court not of record, it shall be commenced by the personal service upon the owner, anywhere within the state, of a summons and complaint verified in the same manner as a complaint in an action in a court of record. The complaint must set forth substantially the facts contained in the notice of lien, and the substance of the agreement under which the labor was performed or the materials were furnished. The form and contents of the summons shall be the same as provided by the code of civil procedure for the commencement of an action upon a contract in such court. The summons must be returnable not less than twelve nor more than twenty days after the date of the summons, or, if service is made by publication, after the day of the last publication of the summons. Service must be made at least eight days before the return day.

Derivation: Code Civil Procedure, § 3404.

§ 47. How summons served, when personal service cannot be made.

If personal service of the summons cannot be made upon a defendant in an action in a court not of record, by reason of his absence from the state, or his concealment therein, such service may be made by leaving a copy thereof at his last place of residence and by publishing a copy of the summons once in each of three successive weeks in a newspaper in the city or county where the property is situated.

Derivation: Code Civil Procedure, § 3405.

§ 48. Proceedings on return of summons; answer; judgment by default.

At the time and place specified in the summons for the return thereof, in a court not of record, issue must be joined, if both

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parties appear, by the defendant filing with the justice a verified answer, containing a general denial of each allegation of the complaint, or a specific denial of one or more of the material allegations thereof; or any other matter constituting a defense to the lien or to the claim upon which it is founded. If the defendant fail to appear on the return-day, on proof by affidavit of the service of the summons and complaint, judgment may be rendered for the amount claimed, with costs.

Derivation: Code Civil Procedure, § 3406.

§ 49. Issue, how tried; judgment.

If issue is joined in such action in a court not of record, it must be tried in the same manner as other issues in such court, and judgment entered thereon, which shall be enforced, if for the plaintiff, in the manner provided in the following section. If for the defendant, in the same manner as in an action on contract in such court.

Derivation: Code Civil Procedure, § 3407.

§ 50. Execution.

Execution may be issued upon a judgment obtained in an action to enforce a mechanic's lien against real property in a court not of record, which shall direct the officer to sell the title and interest of the owner in the premises, upon which the lien set forth in the complaint existed at the time of filing the notice of lien.

Derivation: Code Civil Procedure, § 3408.

§ 51. Appeals from judgments in courts not of record.

An appeal may be taken from such judgment rendered in a court not of record, according to the provisions of the code of civil procedure, regulating appeals from judgments in actions on contract in such courts.

Derivation: Code Civil Procedure, § 3409.

§ 52. Transcripts of judgments in courts not of record.

When a judgment is rendered in a court not of record, the justice or judge of the court in which it is tried, or other person authorized to furnish transcripts of judgments therein, shall furnish the successful party a transcript thereof, which he may file with the clerk of the county with whom the notice of lien is filed. The filing of such transcript has the same effect as the filing of a transcript of any other judgment rendered in such courts.

Derivation: Code Civil Procedure, § 3410.

§ 53. Costs and disbursements.

If an action is brought to enforce a mechanic's lien against real

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property in a court of record, the costs and disbursements shall rest in the discretion of the court, and may be awarded to the prevailing party. The judgment rendered in such an action shall include the amount of such costs and specify to whom and by whom the costs are to be paid. If such action is brought in a court not of record, they shall be the same as allowed in civil actions in such court. The expenses incurred in serving the summons by publication may be added to the amount of costs now allowed in such court.

Derivation: Code Civil Procedure, § 3411.

§ 54. Judgment in case of failure to establish lien.

If the lienor shall fail, for any reason, to establish a valid lien in an action under the provisions of this article, he may recover judgment therein for such sums as are due him, or which he might recover in an action on a contract, against any party to the action.

Derivation: Code Civil Procedure, § 3412.

§ 55. Offer to pay money into court, or to deposit securities in discharge of the lien.

At any time after an action is brought under the provision of this article, the owner may make and file with the clerk with whom the notice of lien is filed, if in a court of record, and if in a court not of record, with the court, an offer to pay into court the sum of money stated therein, or to execute and deposit securities which he may describe, in discharge of the lien, and serve upon the plaintiff a copy of such offer. If a written acceptance of the offer is filed with such clerk, or court, within ten days after its service, and a copy of the acceptance is served upon the party making the offer, the court, upon proof of such offer and acceptance, may make an order, that on depositing with such clerk, or court, the sum so offered, or the securities described, the lien shall be discharged, and that the money or securities deposited shall take the place of the property upon which the lien existed, and shall be subject to the lien. If the offer is of money only, the court, on application and notice to the plaintiff may make such order, without the acceptance of the offer by the plaintiff. If such action is brought in a court not of record, such order may be made by the county court of the county where such action is brought upon notice, and upon filing such order and depositing such sum of money or securities with the county clerk of such county, he shall forthwith discharge said notice of lien, by writing upon the margin of the record thereof, the words "discharged by payment." Money or securities de-

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posited upon the acceptance of an offer pursuant to this section shall be held by the clerk or the court until the final determination of the action, including an appeal.

Derivation: Code Civil Procedure, § 3413.

§ 56. Preference over contractors.

When a laborer, subcontractor or material man shall perform labor or furnish materials for an improvement of real property or for a public improvement, for which he is entitled to a mechanic's lien, the amount due to him shall be paid out of the proceeds of the sale of such property or out of the moneys of the state or municipal corporation applicable to the construction of the public improvement, under any judgment rendered pursuant to this article, in the order of priority of his lien, before any part of such proceeds is paid to the person for whom he has performed such labor or furnished such materials. If several notices of lien are filed for the same claim, as where the contractor has filed a notice of lien, for the services of his workmen, and the workmen have also filed notices of lien, the judgment shall provide for but one payment of the claim which shall be paid to the parties entitled thereto in the order of priority. Payment voluntarily made upon any claim filed as a lien shall not impair or diminish the lien of any person except the person to whom the payment was made. (Amended by L. 1916, ch. 507, in effect July 1, 1916.)

Derivation: Code Civil Procedure, § 3414.

§ 57. Judgment may direct delivery of property in lieu of money.

If the owner has agreed to deliver bills, notes, securities or other obligations or any other species of property, in payment of the debt upon which the lien is based, the judgment may direct that such substitute be delivered or deposited as the court may direct, and the property affected by the lien cannot be sold, by virtue of such judgment, except in default of the owner to so deliver or deposit within the time directed by the court.

Derivation: Code Civil Procedure, § 3415.

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§ 58. Judgment for deficiency.

If upon the sale of the property under judgment in a court of record there is a deficiency of proceeds to pay the plaintiff's claim, judgment may be docketed for the deficiency against any person liable therefor, who shall be adjudged to pay the same in like manner and with like effect as in judgments for deficiency in foreclosure cases.

Derivation: Code Civil Procedure, § 3416.

§ 59. Vacating of a mechanic's lien, by order of court.

A mechanic's lien on real property may be vacated and canceled by an order of a court of record. Before such order shall be granted, a notice shall be served upon the lienor, either personally or by leaving it at his last known place of residence, with a person of suitable age, with directions to deliver it to the lienor. Such notice shall require the lienor to commence an action to enforce the lien, within a time specified in the notice, not less than thirty days from the time of service, or show cause at a special term of a court of record, or at a county court, in a county in which the property is situated, at a time and place specified therein, why the notice of lien filed should not be vacated and canceled of record. Proof of such service and that the lienor has not commenced the action to foreclose such lien, as directed in the notice, shall be made by affidavit, at the time of applying for such order.

Derivation: Code Civil Procedure, § 3417.

§ 60. Judgment in action to foreclose lien on account of public improvement.

If, in an action to enforce a lien on account of a public improvement, the court finds that the lien is established, it shall render judgment directing the state or the municipal corporation to pay over to the lienors entitled thereto for work done or material furnished for such public improvement, and in such order of priority as the court may determine, to the extent of the sums found due the lienors from the contractors, so much of the funds or money which may be due from the state or municipal corporation to the contractor, as will satisfy such liens, with interest and costs, not

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exceeding the amount due to the contractor. (Repealed by L. 1911, ch. 450; re-enacted without change by L. 1911, ch. 873, in effect Oct. 6, 1911.)

Derivation: Code Civil Proceduree, § 3418.

§ 61. Judgment in action to foreclose a mechanic's lien on property of a railroad corporation.

If the lien is for labor done or materials furnished for a railroad corporation, upon its land, or upon or for its track, rolling stock or the appurtenances of its railroad, the judgment shall not direct the sale of any of the real property described in the notice of the lien, but when in such case, a judgment is entered and docketed with the county clerk of the county where the notice of lien is filed, or a transcript thereof is filed and docketed in any other county, it shall be a lien upon the real property of the railroad corporation, against which it is obtained, to the same extent, and enforceable in like manner as other judgments of courts of record against such corporation.

Derivation: Code Civil Procedure, § 3419.

§ 62. Bringing in new parties.

Where a lienor who has filed a lien after the commencement of an action and at any time up to and including the day preceding the day on which is commenced the trial in a court of record of an action to foreclose or enforce a mechanic's lien, makes application to be made a party, the court must direct him to be brought in by amendment or, if the application be made by any other person to make such lienor a party, the court may in its discretion direct him to be brought in by amendment. The order to be entered on such application shall provide as to the time and manner of service of his pleading and the court shall in such order direct the pleadings, papers and proceedings of the other several parties, shall be deemed amended, so as not to require the making or serving of papers other than said order to accomplish the amendment, and that the allegations in the answer of the lienor brought in shall, for the purposes of the action, be deemed denied by the other parties to the action. The action shall be so conducted by the court as not

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to cause substantially any delay in the action being tried by reason of such lienor being made a party. The bringing in of such party shall be without prejudice to any of the proceedings had and if the action be on any calendar of any court it shall retain its place on such calendar and the note of issue and the notices of trial under which such case shall be on any calendar shall not be affected, nor any further notice of trial required by reason of such lienor being made a party. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 63. Service of answer on state or municipal corporation.

In an action to foreclose a lien for a public improvement each defendant named in the original summons shall within forty days after the service of the complaint on him serve upon the state or municipal corporation, a copy of his answer or demurrer. When the city of New York is a party such service shall be made on the corporation counsel. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

§ 64. Award of personal judgment by court or referee.

A court or referee in any action heretofore or hereafter brought may at any time award a money judgment in favor of any party. This shall not preclude the rendition of other judgments in the action. Any payment made on account of either judgment in favor of a party shall be credited on the other judgment. (Added by L. 1916, ch. 507, in effect July 1, 1916.)

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ARTICLE 4.

LIENS ON VESSELS AND ENFORCEMENT THEREOF.

SECTION
80. Liens on vessels.
81. Lien on vessel causing damage.
82. Notice of lien, when to be filed.
83. Duration of lien.
84. Assignment of lien.
85. Enforcement of lien.
86. Application for warrant.
87. Undertaking to accompany application.
88. Warrant; execution thereof.
89. Order to show cause; contents; service.
90. Notice of issuance of warrant to be published and served.
91. Proceedings upon return of order to show cause; trial of issue
92. Order of sale, when made.
93. Sale and proceeds.
94. Notice of the distribution of the proceeds of sale.
95. Liens for which no warrants are issued.
96. Contested claims.
97. Trial of issues and appeal.
98. Distribution of proceeds.
99. Payment of uncontested claims.
100. Distribution of surplus.
101. Application for a discharge of warrant.
102. Undertaking to accompany application for discharge.
103. Discharge of warrant.
104. Action on undertaking.
105. Costs of proceedings.
106. Sheriff must return warrant.
107. Discharge of lien before issue of warrant.

§ 80. Liens on vessels.

A debt which is not a lien by the maritime law, and which amounts to fifty dollars or upwards, on a sea-going or ocean-bound vessel, or fifteen dollars or upwards on any other vessel shall be a lien upon such vessel, her tackle, apparel and furniture, and shall be preferred to all other liens thereon, except mariners' wages, if such debt is contracted by the master, owner, charterer, builder or consignee of such ship or vessel, or by the agent of either of them, within this state, for either of the following purposes:

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1. For work done or material or other articles furnished in this state for or towards the building, repairing, fitting, furnishing or equipping of such vessel.

2. For such provisions and stores, furnished within this state, as are fit and proper for the use of such vessel, at the time when they were furnished.

3. For wharfing and the expense of keeping such vessel in port, and for the expense of employing persons to watch her.

4. For loading or unloading such vessel, or for the advances made to procure necessaries therefor, or for the insurance thereof.

5. For towing or piloting such vessel, or for the insurance or premium of insurance of or on such vessel or her freight; but no lien exists for a debt contracted for any purpose specified in this subdivision, unless it amounts to the sum of twenty-five dollars or more.

Derivation: Lien Law, § 30.

§ 81. Lien on vessel causing damage.

When a vessel shall have sustained damage by any other vessel through the negligence or wilful misconduct of the person navigating such vessel, to the extent of fifty dollars, the owner of the damaged vessel shall have a lien, unless a lien is given therefor by maritime law, upon the vessel causing the damage, her tackle, apparel and furniture, to the extent of such damage, which shall be deemed a debt for the purposes of this article, and the master, owner, agent or consignee of the damaged vessel may enforce such lien in like manner and with like effect as in case of other liens created by this article; but a notice of the lien must be filed in the office of the clerk of the county in which such damage is sustained, and proceedings to enforce the lien must be commenced within ten days after the damage has been done, or such damage shall cease to be a lien upon such vessel. But if such damage is sustained in either of the counties of New York, Kings or Queens such notice shall be filed in the office of the clerk of the city and county of New York, and if the vessel causing such damage is built, used or fitted for the navigation of any of the canals or lakes of the state, a certified copy of such notice shall be filed in the office of the superintendent of public works as provided in the next section. (Amended by L. 1910, ch. 182, in effect Apr. 28, 1910.)

Derivation: Lien Law, § 31.

§ 82. Notice of lien, when to be filed.

Every debt specified in section eighty shall cease to be a lien

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upon such vessel unless the lienor shall, within ninety days after the debt becomes due, except as hereinafter provided, file a notice of lien, containing the name of the vessel, the name of the owner, if known, the particulars of the debt and a statement of the amount claimed to be due from such vessel, and verified by the lienor, his legal representative, agent or assignee, to be true and correct. If the debt is based upon a written contract, a copy of such contract shall be attached to such notice. The notice shall be filed in the office of the clerk of the county in which the debt is contracted. But if the debt was contracted in the city of New York, such notice shall be filed in the office of the clerk of the county of New York. If the vessel is built, used or fitted for the navigation of any of the canals or lakes of the state, the lienor shall immediately after filing the notice in the county clerk's office, file a copy thereof in the office of the superintendent of public works of the state, duly certified by the county clerk in whose office the original notice is filed, provided, however, that whenever any debt specified in section eighty is contracted by the master, owner, charterer, builder or consignee of any ship or vessel navigating the western and northwestern lakes, or any of them, or the river Saint Lawrence, or by the agent of such master, owner, charterer, builder or consignee, such debt shall not cease to be a lien upon such ship or vessel if the person to whom such debt may be owing shall, by the first Tuesday of February next succeeding the time such debt becomes due cause to be drawn up, verified and filed, specifications of such debt in the form and comprising the statements in this section prescribed. (Amended by L. 1910, ch. 182, in effect Apr. 28, 1910.)

Derivation: Lien Law, § 32, as amended by L. 1904, ch. 246, § 1, and L. 1908, ch. 238, § 1.

§ 83. Duration of lien.

Every lien for a debt shall cease if the vessel navigates the western or northwestern lakes, or either of them, or the Saint Lawrence river, at the expiration of six months after the first of January next succeeding the time when the debt was contracted, and in case of any other vessel, at the expiration of twelve months after the debt was contracted. If, upon the expiration of the time herein limited in either of such cases, such vessel shall be absent from the port at which the debt was contracted, the lien shall continue until the expiration of thirty days after the return of such vessel to such port. If proceedings are instituted for the enforcement of the lien

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within the time herein limited, such lien shall continue until the termination of such proceedings.

Derivation: Lien Law, § 33.

§ 84. Assignment of lien.

A lien, a notice of which has been filed pursuant to the provisions of this article, may be assigned by a written instrument duly acknowledged and filed in the same place where the notice of the lien was filed. The assignment shall specify the debt upon which the lien is founded, the date of the filing of the notice thereof and the assignee. Such assignment and the name of the assignee shall be entered by the clerk opposite the original entry of such lien, and after the filing of such assignment, but not otherwise, the assignee may enforce the lien in like manner as the assignor could have done.

Derivation: Lien Law, § 34.

§ 85. Enforcement of lien.

If a lien, created by virtue of this article, is founded upon a maritime contract, it can be enforced only by proceedings in the courts of the United States, and in any other case, in the courts of this state, in the manner prescribed in the following sections of this article.

Derivation: Lien Law, § 35, and Code Civil Procedure, § 3419.

§ 86. Application for warrant.

The lienor may make a written application to a justice of the supreme court, at chambers, in the judicial district in which the lienor resides or in a county adjoining such district, for a warrant to enforce a lien on a vessel and to collect the amount thereof.

The application shall specify:

1. By whom and when such debt was contracted and for what vessel; and the name and residence of the owner of the vessel, if known.

2. The items composing the debt and the amount claimed.

3. That the debt is justly due the applicant over and above all payments and just deductions.

4. Any assignment or transfer of the debt which may have taken place since it was contracted.

5. When and where the notice of lien was filed.

The application shall be verified in the same manner as a pleading in a court of record.

Derivation: Code Civil Procedure, § 3420.

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§ 87. Undertaking to accompany application.

Such application shall be accompanied by an undertaking in the sum of at least one hundred dollars, to be approved by such justice and filed in the office of the clerk of the county where the notice of lien is filed, with at least one surety, who shall be a resident and freeholder within the state, to the effect that if it is finally adjudged that the applicant was not entitled to the warrant, he will pay all costs which may be awarded against him, not exceeding the amount specified in the undertaking, and any damages sustained by reason of the seizure of the vessel under such warrant, not to exceed fifty dollars.

Derivation: Code Civil Procedure, § 3421.

§ 88. Warrant; execution thereof.

Thereupon, such justice shall issue a warrant to the sheriff of the county where such vessel may be, or, generally to the sheriff of any county, specifying the amount of the claim, and the names of the persons making the claim and commanding him to seize and safely keep such ship or vessel, her tackle, apparel and furniture, to satisfy such claim, if established to be a lien upon the vessel according to law, and within ten days after the seizure to make return of his proceedings under the warrant to such justice. The sheriff shall forthwith execute such warrant, and keep the vessel, her tackle, apparel and furniture to be disposed of according to law. In his return the sheriff shall state also whether he has seized such vessel by virtue of any other warrant, and if so, in whose behalf and for what sum such warrant was issued and the time of its receipt by him.

Derivation: Code Civil Procedure, § 3422.

§ 89. Order to show cause; contents; service.

At the time of issuing such warrant the justice shall grant an order to show cause, why the vessel seized by virtue of such warrant should not be sold to satisfy the lien specified in the application. Such order shall be returnable not less than eight days after the service thereof, as required in this section, before the justice and at the time and place mentioned therein. It shall be directed to the master or other person in charge of the vessel seized and to the owner and consignee thereof, if known. A copy of such order and the application for the warrant shall be served personally upon the master or other person in charge of such vessel at the time of the execution of such warrant; and personally upon the owner and

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consignee of such vessel if a resident of the state, or if not a resident of the state, by mail addressed to such owner or consignee at his last known place of residence, within ten days after the execution of such warrant.

Derivation: Code Civil Procedure, § 3423.

§ 90. Notice of issuance of warrant to be published and served. Within three days after the issue of the warrant, the applicant shall cause a notice to be published once in each week for two consecutive weeks, in a newspaper published in the county where the vessel was seized, stating the issuance of the warrant, the date thereof, the amount of the claim specified therein, the name of the applicant, and the time and place of the return of the order to show cause granted as prescribed in this article,* If the vessel seized is used to navigate any of the canals or lakes of the state, a copy of such notice shall be served personally, or by mail, within ten days after the first publication, upon all persons who have filed claims or liens against such vessel, by mortgage or otherwise in the office of the superintendent of public works of the state. (Amended by L. 1910, ch. 182, in effect Apr. 28, 1910.)

Derivation: Code Civil Procedure, § 3424.

§ 91. Proceedings upon return of order to show cause; trial of issue. At the time and place mentioned in the order to show cause, the master or other person in charge of such vessel, the owner or consignee thereof or any other person interested therein, may apply and contest the claim of the lienor as contained in the application for a warrant, by filing with the justice an affidavit controverting any material allegation contained in the notice of lien or the application of the lienor. The issue so raised shall be tried as are other issues in a court of record, without a jury, before the justice granting the order at a time to be fixed by him, or they may be referred by him to a referee, to be heard and determined.

Derivation: Code Civil Procedure, § 3425.

§ 92. Order of sale, when made. An order may be made by the justice before whom the order to show cause was returnable, for the sale of the vessel, her tackle, apparel and furniture, in the following cases:

1. In case the master, owner, consignee or other person interested in the vessel does not appear upon the return day and contest the claim of the lienor, and proof is made of the service of the order to show cause and the application and of the publication of the

* So in original.

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notice and the service thereof, as required in this article and due proof is made of the validity and amount of such claim;

2. In case a trial is had of the issues raised, and it is determined that the lien is valid and the amount claimed by the lienor or some part thereof is due.

Such orders shall direct the sheriff who seized the vessel to sell the same and her tackle, apparel and furniture, to satisfy the liens established on the hearing, and pay the costs and expenses necessarily incurred in the proceedings as prescribed in this article. The rights of mortgagees whose mortgages have been filed according to law, prior to the filing of the notice of lien, on account of which the order of sale is granted, shall not be affected by the sale of such vessel pursuant to such order.

Derivation: Code Civil Procedure, § 3426.

§ 93. Sale and proceeds.

Within ten days after the receipt of the order of sale, the sheriff, unless the order be sooner vacated or the lien discharged, shall sell the vessel seized, her tackle, apparel and furniture, upon notice, and in the manner prescribed by law for the sale of personal property upon execution issued out of a court of record. He shall make a return to the justice granting the order, of his proceedings thereunder, and shall, after deducting his fees and expenses in seizing, preserving, watching and selling the vessel, pay into court the remaining proceeds of the sale.

Derivation: Code Civil Procedure, § 3427.

§ 94. Notice of the distribution of the proceeds of sale.

The justice granting the order of sale, upon receiving such proceeds, shall order a notice to be published once a week for three successive weeks in the same newspaper in which the notice of seizure was published, requiring all persons having liens upon the vessel under this article, and the master, owner, agent or consignee thereof, and all other persons interested therein, to appear before him, or a referee appointed by him, at the time and place specified in such notice, not less than thirty nor more than forty days from the first publication thereof to attend a distribution of such proceeds. Such justice may appoint a referee to make such distribution.

Derivation: Code Civil Procedure, § 3428.

§ 95. Liens for which no warrants are issued.

A person who has a lien under this article against the vessel so

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sold, and has made no application for a warrant thereon, may present to and file with the justice or referee at the time and place specified in the notice of distribution of such proceeds, a verified statement of the facts and allegations required to be stated in the application for a warrant. And thereupon such lien shall be determined, with the same effect as if a warrant had been issued to enforce such lien.

Derivation: Code Civil Procedure, § 3429.

§ 96. Contested claims.

The master, owner, agent or consignee of the vessel, or any person having an interest in the proceeds before final distribution thereof, may contest any claim made against the vessel or its proceeds, by filing with such justice a written answer, verified as a pleading in a court of record, designating the claims contested and controverting any material allegation of the notice of lien, application for a warrant or statement of lien, and setting up any other matter in defense thereto. A copy of such answer shall be served within five days from such filing, upon the person whose claim is contested, or his attorney.

If the answer does not contain any matter of defense to the claim, it may be stricken out on motion of any person who has filed a notice of lien against the vessel.

Derivation: Code Civil Procedure, § 3430.

§ 97. Trial of issues and appeal.

The issues raised by any such answer shall be tried in the same manner as issues are tried in a court of record without a jury, before such justice at a time and place to be fixed by him, or they may be referred by such justice to a referee, to hear and determine. An appeal may be taken from the decision of such justice or referee as in a civil action in a court of record. On such appeal the decision upon the law and the facts, may be reversed, modified, or a new trial ordered. Costs, upon appeal, shall be allowed, as in the case of an appeal from a judgment in a court of record, and judgment may be rendered therefor.

Derivation: Code Civil Procedure, § 3431.

§ 98. Distribution of proceeds.

Upon the determination of all the claims presented, the justice or referee shall make an order of distribution of the proceeds. The order shall direct the payment of the claims found to be subsisting liens upon such vessels or proceeds, with all costs, expenses

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and allowances, in the order of the priority of filing the notices of such liens, as provided in this article. Such costs, expenses and allowances shall be in the discretion of the justice, except as otherwise provided in this article.

Derivation: Code Civil Procedure, § 3432.

§ 99. Payment of uncontested claims.

Any uncontested claims, entitled to priority of payment over the claims which are contested, shall, on motion of the parties interested, be paid with costs, in the order of their respective priorities, without awaiting the determination of such contest. If at any time it is made to appear that after the payment of all prior uncontested claims and their respective costs, and after deducting an amount sufficient to pay all prior contested claims and costs, that there remains a surplus of proceeds applicable to the payment of any subsequent uncontested claims, such claims may on notice to all the parties interested be paid out of the surplus with costs, without awaiting the determination of such contest.

Derivation: Code Civil Procedure, § 3433.

§ 100. Distribution of surplus.

If upon payment of all claims established as liens against the vessel from the proceeds of its sale, a surplus remains, it may be distributed by the court to the persons entitled thereto, after a hearing and the publication of a notice by the applicants for the same time and in the same manner as the notice of seizure is required by this article to be published. Such notice shall specify the amount of the surplus proceeds, the names of the persons applying therefor, the name of the vessel from the sale of which the same arose, the date of the sale and the time and place when the hearing will be held and the distribution of the surplus made.

Derivation: Code Civil Procedure, § 3434.

§ 101. Application for a discharge of warrant.

The owner, consignee, agent or master of any vessel so seized, or any person interested therein, may at any time before the sale of the vessel under this article, apply in person or by attorney to the justice issuing the warrant, on at least one day's notice to the lienor or his attorney, for an order discharging the same on giving an undertaking therefor. Such notice shall specify the names, places of residence and places of business of the proposed sureties upon such undertaking.

Derivation: Code Civil Procedure, § 3435.

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§ 102. Undertaking to accompany application for discharge.

The application shall be accompanied by an undertaking to the lienor executed by at least two sureties in a sum at least twice the amount specified in the warrant, to the effect that the person making the application for the discharge of the vessel will pay the amount of all claims and demands which shall be established to be due to the person in whose behalf the warrant was issued, and to have been a subsisting lien on the vessel at the time of its issue. The undertaking when found sufficient, must be approved by the justice to whom the application is made as to the sufficiency of the sureties, and the lienor may examine the sureties as to their sufficiency at such time and place as may be fixed by such justice.

Derivation: Code Civil Procedure, § 3436.

§ 103. Discharge of warrant.

When such undertaking shall have been executed, approved and delivered to the lienor and the taxed fees of the sheriff upon the seizure and detention of the vessel have been paid, the justice shall make an order discharging the warrant, and no further proceedings against the vessel seized shall be had under this article founded upon any demand secured by such undertaking.

Derivation: Code Civil Procedure, § 3437.

§ 104. Action on undertaking.

The undertaking may be prosecuted by action in any court having jurisdiction thereof, at any time within three months after its delivery, but not afterward. If, in such action it is found that any sum is due the plaintiff which was a subsisting lien upon the vessel at the time the notice of lien was filed, the plaintiff shall have judgment for the recovery of the same with the costs and disbursements of the action and the costs of the proceedings for the seizing of the vessel and shall have execution therefor. If it is found in such action that no such lien existed, judgment shall be rendered against the plaintiff for the costs and disbursements of the action and the costs of the proceedings, including the amount paid the sheriff in the discharge of the vessel from the warrant.

Derivation: Code Civil Procedure, § 3438.

§ 105. Costs of proceedings.

The costs of the proceedings in addition to the disbursements shall be: For filing notice of lien, two dollars. For applying for and procuring a warrant if the lien is fifty dollars or under, ten

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dollars; if the lien exceeds fifty dollars and is not more than two hundred and fifty dollars, twenty dollars; if the lien exceeds two hundred and fifty dollars, and is not more than one thousand dollars, thirty dollars; if the lien exceeds one thousand dollars, forty dollars. For attending proceedings upon the discharge of the warrant on the execution of an undertaking, ten dollars.

The sheriff shall be entitled in any such proceedings to the following fees and expenses: For serving warrant, one dollar. For return of the same, one dollar. The necessary sums paid by him for the expense of keeping the vessel in custody, not exceeding two dollars and fifty cents for each day. The sheriff shall not receive any other or greater sums for any service rendered by him in any proceeding under this article, nor shall he be allowed expense of custody of the vessel upon more than one warrant at the same time. All costs, disbursements and fees shall be verified by affidavit and adjusted by the justices issuing the warrant.

Derivation: Code Civil Procedure, § 3439.

§ 106. Sheriff must return warrant.

A sheriff to whom a warrant may have been delivered pursuant to the provisions of this article, may be compelled by an order made by the justice issuing it, to return such warrant with his proceedings thereon and pay over moneys in his hands, and to take any necessary steps for the safety of the vessel, pursuant to any order for that purpose. Obedience to such order may be enforced by attachment against the sheriff on the application of any person interested therein.

Derivation: Code Civil Procedure, § 3440.

§ 107. Discharge of lien before issue of warrant.

When any notice of lien shall have been filed under this article and no warrant has been issued to enforce the same, any person interested in the vessel, may apply to any justice of the supreme court for leave to discharge the lien upon giving an undertaking therefor to the lienor. The application shall be in writing, and shall state the amount of the lien claimed and the grounds of the defense thereto, and the names of the persons proposed as sureties on such undertaking, with their respective residences and places of business. Upon presenting such application with proof that a copy thereof, with at least five days' notice of the time and place of presenting the same, has been served upon the lienor, such justice may, if no just cause be shown in opposition thereto, author-

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ize the execution of such undertaking, which shall be to the same effect as an undertaking required in this article upon the application to discharge a warrant, and an action may be brought thereon in like manner. At the time of the presentation of such application the sureties proposed in such undertaking shall justify before such justice. When such undertaking has been executed and approved by such justice and delivered to the lienor, the justice shall direct the clerk with whom the notice of lien is filed to mark the same as discharged, and it shall cease to be a lien upon such vessel.

Derivation: Code Civil Procedure, § 3441.

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ARTICLE 5.

LIENS ON MONUMENTS, GRAVESTONES AND CEMETERY STRUCTURES.

SECTION 120. Liens on monuments, gravestones and cemetery structures.
121. Notice of lien.
122. Proceedings to enforce lien.
123. Disposition of proceeds of sale.
124. Duties of officers of cemetery associations.

§ 120. Liens on monuments, gravestones and cemetery structures.

A person furnishing or placing in a cemetery or burial ground, a monument, gravestone, inclosure or other structure, has a lien thereon for the agreed price thereof or the part remaining unpaid, with interest from the time the amount was due, upon filing with the superintendent or person in charge of such cemetery or burial ground, a notice of lien as provided in this article.

Derivation: Lien Law, § 40.

§ 121. Notice of lien.

Such notice may be filed at any time after the completion of the work, but must be filed within one year after the agreed price for furnishing or placing such monument, gravestone, inclosure or other structure becomes due, and shall state that the lienor has a lien on such monument, gravestone, inclosure or structure for the purchase price thereof, or some unpaid part of such purchase price, with interest, specifying the amount agreed to be paid, and the amount unpaid, with a description of such monument, gravestone, inclosure or other structure, and the location of the plot upon which it stands, and the names of the persons with whom the agreement for the purchase and erection of the structure, or for the performance of such labor was made. The notice shall be signed and verified by the lienor. The lienor shall, within ten days after the filing of such notice, serve a copy personally, or by mail, upon the person with whom the agreement for the purchase and erection of such monument, gravestone, or other structure, or for the performance of labor thereon was made, and upon the owner of

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the lot upon which such monument, gravestone or other structure is erected, if the name and residence of such owner can, with reasonable diligence be ascertained.

Derivation: Lien Law, § 41.

§ 122. Proceedings to enforce lien.

After the service of such notice, an action to recover the amount of the debt and to enforce a lien therefor may be maintained by the lienor against the person with whom the agreement was made, for the purchase and erection of such monument, gravestone, inclosure or other structure or for the performance of labor thereon. If such lienor succeeds in establishing his lien, the judgment recovered may authorize him to remove such monument, gravestone, inclosure or other structure from the burial ground or cemetery and to sell the same at public auction to satisfy the amount of such judgment. Notice of the sale shall be published at least ten days before the time thereof, in a newspaper published in the town or city where such sale is to take place, and if no newspaper is published therein, in a newspaper nearest thereto. Such notice shall state the time and place of the sale, and shall describe the property to be sold. A copy of such notice shall be served personally or by mail at least ten days before such sale upon the persons served with the notice of lien as prescribed in the preceding section.

Derivation: Lien Law, § 42.

§ 123. Disposition of proceeds of sale.

The lienor shall, out of the proceeds of the sale, pay the expenses thereof, and the expenses of the removal of such monument, gravestone, inclosure or other structure from the cemetery or burial ground, not exceeding fifty dollars, if a monument, and ten dollars, if a gravestone, inclosure or other structure, and retain out of such proceeds, the amount due upon the judgment recovered in the action to enforce the lien, and the residue, if any, shall be forthwith paid to the judgment debtor.

Derivation: Lien Law, § 43.

§ 124. Duties of officers of cemetery associations.

The superintendent or other person in charge of a cemetery or burial ground shall not permit the removal, alteration or inscription of a monument, gravestone, inclosure or other structure, against which a lien exists, after the notice of such lien has been filed and served as prescribed in this article, except pursuant to the terms of a judgment recovered in an action brought to enforce

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such lien. No officer of a cemetery association, or other person connected with a cemetery or burial ground, shall hinder or obstruct the removal in a proper manner of any such monument, gravestone, inclosure or other structure pursuant to the terms of such judgment.

Derivation: Lien Law, § 44.

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ARTICLE 6.

LIENS FOR LABOR ON STONE.

SECTION 140. Lien for labor performed in quarrying, mining, dressing and cutting stone.
141. Duration and effect of lien.
142. Discharge of lien.

§ 140. Lien for labor performed in quarrying, mining, dressing and cutting stone.

A person employed in a quarry, mine, yard or dock at excavating, quarrying, mining, dressing or cutting sandstone, granite, cement stone, limestone, bluestone or marble, may have a lien on such sandstone, cement stone, granite, limestone, bluestone or marble, for the amount due for the labor expended thereon, upon filing a notice of lien in the office where a chattel mortgage upon such sandstone, cement stone, granite, limestone, bluestone or marble is required to be filed, as provided in this chapter. Such notice must be filed within thirty days after the completion of such labor and must state the amount due therefor, the name and residence of the lienor, and the name of the person for whom the labor was performed, the quantity and description of the sandstone, cement stone, granite, bluestone, limestone or marble against which the claim is made. Such notice of lien shall be indorsed, filed and entered by the proper officer, in the same manner as chattel mortgages, and the same fees shall be charged therefor. A copy of the notice so filed shall be served upon the owner of such sandstone, cement stone, granite, limestone, bluestone or marble or upon the person in charge of the quarry, mine, yards or docks wherein such services were performed within five days after the filing thereof.

Derivation: Lien Law, § 50, as amended by L. 1899, ch. 322, § 1.

§ 141. Duration and effect of lien.

Such lien shall terminate unless an action is brought to enforce the same within three months after the date of filing such notice, as provided in article nine for the enforcement of a lien upon a chattel. If the labor upon such sandstone, cement stone, granite, bluestone, limestone or marble is performed for a contractor under

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a contract with the owner of such quarry, mine, yard or dock, the owner shall not be liable to pay by reason of all the liens filed against such quarry, mine, yard or dock, a greater sum than the amount unpaid upon such contract at the time of filing such notices, or in case there is no contract, than the aggregate amount unpaid of the value of labor and services performed pursuant to the preceding section. The lien created by this article shall not attach to any material which shall have become a part of any building or structure, or ceased to be the property of the person for whom such labor was performed.

Derivation: Lien Law, § 51 as amended by L. 1899, ch. 322, § 1.

§ 142. Discharge of lien.

Such lien may be discharged by a payment of the amount due thereon, by a failure to bring an action to enforce the same within the time prescribed in the preceding section, by the written consent of the lienor, duly acknowledged and filed with the proper officer to the effect that such lien may be discharged, and by the owner of such sandstone, cement stone, granite, bluestone, limestone or marble filing with such officer an undertaking in an amount equal to twice the sum specified in the notice of lien, executed by one or more sureties who shall justify in such amount and approved by the officer with whom the notice of lien is filed, conditioned for the payment of the sum due such lienor, by reason of such lien, and the cost and expenses of enforcing the same.

Derivation: Lien Law, § 52, as amended by L. 1899, ch. 322, § 1.

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ARTICLE 7.

(Article 7 amended by L. 1916, ch. 301, in effect April 25, 1916.)

LIENS FOR SERVICE OF STALLIONS OR BULLS.

SECTION 160. Lien on mare and foal, or on cow and calf.
161. Statement and certificate.
162. Copy of statement and certificate to be posted.
163. Penalty.

§ 160. Lien on mare and foal, or on cow and calf.

On complying with the provisions of this article, the owner of a stallion or bull shall have a lien on each mare or cow served together with the foal or calf of such mare or cow from such service, for the amount agreed on at the time of service, or if no agreement was made, for the amount specified in the statement hereinafter required to be filed, if within fifteen months after such service he files a notice of such lien in the same manner and place as chattel mortgages are required by law to be filed. Such notice of lien shall be in writing, specifying the person against whom the claim is made, the amount of the same and a description of the property upon which the lien is claimed, and such lien shall terminate at the end of eighteen months from the date of such filing, unless within that time an action is commenced for the enforcement thereof, as provided in sections two hundred and six to two hundred and ten, both inclusive, of this chapter, for the foreclosure of a lien on chattels. (Amended by L. 1916, ch. 301, in effect April 25, 1916.)

Derivation: Lien Law, § 60, as amended by L. 1902, ch. 351, § 1, and L. 1904, ch. 261, § 1.

§ 161. Statement and certificate.

A person having the custody or control of a stallion or bull and charging a fee for his services, shall, before advertising or offering such services to the public, file with the clerk of the county in which he resides or in which such stallion or bull is kept for ser-

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vice, a written statement giving the name, age, description and pedigree, if known, and if not, stating that the same is unknown, of such stallion or bull and the terms and conditions on which he will serve. On filing such statement, the county clerk shall record the same in a book provided for that purpose and issue a certificate to such person, that such statement has been so filed and recorded. He shall be entitled to receive ten cents per folio for recording such statement and for such certificate. (Amended by L. 1916, ch. 301, in effect April 25, 1916.)

Derivation: Lien Law, § 61.

§ 162. Copy of statement and certificate to be posted.

The person having the custody and control of such stallion or bull, shall post a written or printed copy of such statement and certificate in a conspicuous place in each locality in which said stallion or bull is kept for service. (Amended by L. 1916, ch. 301, in effect April 25, 1916.)

Derivation: Lien Law, § 62.

§ 163. Penalty.

A person who neglects or refuses to file and post such statement as required in this article, or falsely states the pedigree of such stallion or bull in such statement, forfeits all fees for the services of such stallion or bull and is liable to a person deceived or defrauded thereby for the damages sustained. (Amended by L. 1916, ch. 301, in effect April 25, 1916.)

Derivation: Lien Law, § 63.

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ARTICLE 8.

OTHER LIENS ON PERSONAL PROPERTY.

SECTION 180. Artisans' lien on personal property.
181. Liens of hotel, apartment hotel, inn, boarding and lodging house keepers.
182. Factor's lien on merchandise.
183. Lien of bailee of animals.
184. Lien of bailee of motor vehicles.
185. Lien of manufacturers and throwsters of silk goods.
186. Lien of bailees for hire.
187. Liens of truckmen and draymen.

§ 180. Artisans' lien on personal property.

A person who makes, alters, repairs or in any way enhances the value of an article of personal property, at the request or with the consent of the owner, has a lien on such article, while lawfully in possession thereof, for his reasonable charges for the work done and materials furnished, and may retain possession thereof until such charges are paid.

Derivation: Lien Law, § 70.

§ 181. Liens of hotel, apartment hotel, inn, boarding and lodging house keepers.

A keeper of a hotel, apartment hotel, inn, boarding house or lodging house, except an emigrant lodging house, has a lien upon, while in possession, and may detain the baggage and other property brought upon his premises by a guest, boarder or lodger, for the proper charges due from him, on account of his accommodation, board and lodging, and such extras as are furnished at his request. If the keeper of such hotel, apartment hotel, inn, boarding or lodging house knew that the property brought upon his premises was not, when brought, legally in possession of such guest, boarder or lodger, or had notice that such property was not then the property of such guest, boarder or lodger, a lien thereon does not exist. An apartment hotel within the meaning of this section includes a hotel wherein apartments are rented for fixed periods of time, either furnished or unfurnished, to the occupants of which the keeper of such hotel supplies food, if required. A guest of an apartment hotel, within the meaning of this section, includes each and every

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person who is a member of the family of the tenant of an apartment therein, and for whose support such tenant is legally liable.

Derivation: Lien Law, § 71, as amended by L. 1899, ch. 380, § 1, and L. 1905, ch. 206, § 1.

§ 182. Factor's lien on merchandise.

A person, in whose name any merchandise shall be shipped, is deemed the true owner thereof so far as to entitle the consignee of such merchandise to a lien thereon:

1. For any money advanced or negotiable security given by such consignee, to or for the use of the person in whose name such shipment is made; and

2. For any money or negotiable security received by the person in whose name such shipment is made, to or for the use of such consignee.

Such lien does not exist where the consignee has notice, by the bill of lading or otherwise, when or before money is advanced or security is given by him, or when or before such money or security is received by the person in whose name the shipment is made, that such person is not the actual and bona fide owner thereof.

Derivation: Lien Law, § 72.

§ 183. Lien of bailee of animals.

A person keeping a livery stable, or boarding stable for animals, or pasturing or boarding one or more animals, or who in connection therewith keeps or stores any wagon, truck, cart, carriage, vehicle or harness, has a lien dependent upon the possession upon each animal kept, pastured or boarded by him, and upon any wagon, truck, cart, carriage, vehicle or harness, of any kind or description, stored or kept provided an express or implied agreement is made with the owners thereof, whether such owner be a mortgagor remaining in possession or otherwise, for the sum due him for the care, keeping, boarding or pasturing of the animal, or for the keeping or storing of any wagon, truck, cart, carriage, vehicle and harness, under the agreement, and may detain the animal or wagon, truck, cart, carriage, vehicle and harness accordingly, until such sum is paid.

Derivation: Lien Law, § 74, as amended by L. 1899, ch. 465, § 1, and L. 1906, ch. 687, § 2.

§ 184. Lien of bailee of motor vehicles.

A person keeping a garage or place for the storage, maintenance, keeping or repair of motor vehicles, as defined by article eleven of the highway law, and who in connection therewith stores, main-

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tains, keeps or repairs any motor vehicle or furnishes gasoline or other supplies therefor at the request or with the consent of the owner, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise, has a lien upon such motor vehicle for the sum due for such storing, maintaining, keeping or repairing of such motor vehicle or for furnishinging gasoline or other supplies therefor and may detain such motor vehicle at any time it may be lawfully in his possession until such sum is paid.

Derivation: Lien Law, § 75, added by L. 1908, ch. 315, § 1.

§ 185. Lien of manufacturers and throwsters of silk goods.

All persons or corporations engaged in the business of manufacturing, spinning or throwing silk into yarn or other goods, shall be entitled to a lien upon the goods and property of others in their possession for the amount of any account that may be due them, from the owners of such silk, by reason of any work and labor performed, and materials furnished in or about the manufacturing, spinning or throwing of the same, or other goods of such owner or owners. Such lien shall not be waived or impaired by the taking of any note or notes for the moneys so due, or for the work and labor performed and materials furnished.

Derivation: Lien Law, § 75a, added by L. 1908, ch. 395, § 1.

§ 186. Lien of bailees for hire.

Every person, firm or corporation engaged in performing work upon any watch, clock or jewelry for a price shall have a lien upon any such watch, clock or jewelry upon which such person, firm or corporation performs such work for the amount of any account that may be due for such work. Such lien shall also include the value or agreed price, if any, of all materials furnished by such bailees for hire in connection with such work, whether added to such article or articles or otherwise. If such account remain unpaid for one year, after completing such work, such bailees for hire may, upon thirty days' notice in writing to the owner specifying the amount due and informing him that the payment of such amount within thirty days will entitle him to redeem such property, sell any such article or articles at public or bona fide private sale to satisfy the account. The proceeds of the sale, after paying the expenses thereof, shall be applied in liquidation of the indebtedness secured by such lien and the balance, if any, shall be paid over to the owner. Such notice may be served by mail, directed to the owner's last known address, or, if the owner or his address be unknown, it may be posted in two public places in the town, village or city where the property is located. Such notice shall be written or printed. Nothing herein contained shall preclude the remedy of enforcing such lien by action, as provided in article nine of this chapter. (Added by L. 1914, ch. 241, in effect April 8, 1914.)

§ 187. Liens of truckmen and draymen.

1. Every person, firm or corporation engaged in carting or trucking property shall have a lien upon such property and may retain such portion of the property in his possession as will insure to the said truckman or drayman, at the sale of such property in the manner hereinafter provided, a fair and reasonable compensation for the material and labor furnished, including any moneys advanced by such bailee for hire in connection with such work. Such truckman or drayman shall have such lien and may retain such property only as provided in paragraph two of this section.

2. If such amount remains unpaid for thirty days after demand, such bailee for hire may upon fifteen days' notice in writing to the owner, specifying the amount due and informing him that the payment of such amount within fifteen days will entitle him to redeem such property, and if such property is not redeemed, such bailee may sell such property at public sale to satisfy the account, including any expense for storage, insurance, or otherwise incurred for the protection or preservation of such property. The proceeds of the sale after paying the expenses thereof shall be applied in liquidation of the indebtedness secured by such lien, and the balance, if any, shall be paid over to the owner. Such notice shall be served by registered mail directed to the owner's last known postoffice address and by posting in three public places in the town, village or city where the property is located. Nothing herein contained shall preclude the remedy of enforcing such a lien by action as provided in article nine of this chapter. (Added by L. 1918, ch. 366, in effect April 30, 1918.)

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ARTICLE 9.

ENFORCEMENT OF LIENS ON PERSONAL PROPERTY.

SECTION 200. Sale of personal property to satisfy a lien.
201. Notice of sale.
202. Sale to be advertised.
203. Redemption before sale.
204. Disposition of proceeds.
205. Remedy not exclusive.
206. Enforcement by action; when and in what courts.
207. Warrant to seize chattel; proceedings thereupon.
208. Judgment.
209. Action in inferior court.
210. Application.

§ 200. Sale of personal property to satisfy a lien.

A lien against personal property, other than a mortgage on chattels and the lien of a keeper of a hotel, apartment hotel, inn, boarding-house or lodging-house, except an emigrant lodging-house, if in the legal possession of the lienor, may be satisfied by the public sale of such property according to the provisions of this article. (Amended by L. 1910, ch. 214, in effect May 5, 1910.)

Derivation: Lien Law, § 80.

§ 201. Notice of sale.

Before such sale is held the lienor shall serve a notice upon the owner with due diligence within such county, if such owner can be found when such lien arose, if not then to the person for whose account the same is then held personally, provided such service can be made with due diligence within the county where such lien arose, but if such person cannot with due diligence be found within such county, then such notice shall be served by mailing it to him at his last known place of residence, or to his last known post-office address. A like notice shall be served in the same way upon any person who shall have given to the lienor notice of an interest in the property subject to the lien. Such notice shall contain a statement of the following facts:

1. The nature of the debt or the agreement under which the lien arose, with an itemized statement of the claim and the time when due;

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2. A brief description of the personal property against which the lien exists;

3. The estimated value of such property;

4. The amount of such lien, at the date of the notice.

It shall also require such owner or person to pay the amount of such lien, on or before a day mentioned therein, not less than ten days from the service thereof, and shall state the time when and place where such property will be sold, if such amount is not paid. If the agreement on which the lien is based provides for the continuous care of property the lienor is also entitled to receive all sums which may accrue under the agreement, subsequent to the notice and prior to payment or a sale of the property; and the notice shall contain a statement that such additional sum is demanded. Such notice shall be verified by the lienor to the effect that the lien upon such property is valid, that the debt upon which such lien is founded is due and has not been paid and that the facts stated in such notice are true to the best of his knowledge and belief.

Derivation: Lien Law, § 81, as amended by L. 1899, ch. 369, § 1.

§ 202. Sale to be advertised.

Each sale of personal property to satisfy a lien thereon shall be at public auction to the highest bidder, and shall be held in the city or town where the lien was acquired. After the time for the payment of the amount of the lien specified in the notice required to be served by the preceding section, notice of such sale, describing the property to be sold, and stating the name of the owner or person for whose account the same is then held and the time and place of such sale, shall be published once a week, for two consecutive weeks, in a newspaper published in the town or city where such sale is to be held, and such sale shall be held not less than fifteen days from the first publication; if there be no newspaper published in such town, such notice shall be posted at least ten days before such sale in not less than six conspicuous places therein.

Derivation: Lien Law, § 82, as amended by L. 1899, ch. 369, § 2.

§ 203. Redemption before sale.

At any time before such property is so sold, the owner thereof may redeem the same by paying to the lienor the amount due on account of the lien, and whatever legitimate expenses have been incurred at the time of such payment in serving the notice and advertising the sale as required in this article. Upon making such

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payment, the owner of such property is entitled to the possession thereof.

Derivation: Lien Law, § 83.

§ 204. Disposition of proceeds.

Of the proceeds of such sale, the lienor shall retain an amount sufficient to satisfy his lien, and the expenses of advertisement and sale. The balance of such proceeds, if any, shall be held by the lienor subject to the demand of the owner, or his assignee or legal representative, and a notice that such balance is so held shall be served personally or by mail upon the owner of the property sold. If such balance is not claimed by the owner or his assignee or legal representative within thirty days from the day of sale, such balance shall be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town, where such sale was held. There shall be filed with such deposit, the affidavit of the lienor, stating the name and place of residence of the owner of the property sold, if known, the articles sold, the prices obtained therefor, that the notice required by this article was duly served and how served upon such owner, and that such sale was legally and how advertised. There shall also be filed therewith a copy of the notice served upon the owner of the property and of the notice of sale published or posted as required by this article. The officer with whom such balance is deposited shall credit the same to the owner of the property, and pay the same to such owner, his assignee or legal representative, on demand and satisfactory evidence of identity. If such balance remains in the possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the general funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city.

Derivation: Lien Law, § 84.

§ 205. Remedy not exclusive.

The preceding provisions of this article do not preclude any other remedy by action or otherwise, now existing, for the enforcement of a lien against personal property, or bar the right to recover so much of the debt as shall not be paid by the proceeds of the sale of the property.

Derivation: Lien Law, § 85.

§ 206. Enforcement by action; when and in what courts.

An action may be maintained to foreclose a lien upon a chattel,

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for a sum of money, in any case where such a lien exists at the commencement of the action. The action may be brought in any court, of record or not of record, which would have jurisdiction to render a judgment, in an action founded upon a contract, for a sum equal to the amount of the lien.

Derivation: Code Civil Procedure, § 1737.

§ 207. Warrant to seize chattel; proceedings thereupon.

Where the action is brought in the supreme court, the city court of the city of New York, or a county court, if the plaintiff is not in possession of the chattel, a warrant may be granted by the court, or a judge thereof, commanding the sheriff to seize the chattel and safely keep it to abide the final judgment in the action. The provisions of title third of chapter seven of the code of civil procedure apply to such warrant, and to the proceedings to procure it, and after it has been issued, as if it was a warrant of attachment, except as otherwise expressly prescribed in this article.

Derivation: Code Civil Procedure, § 1738.

§ 208. Judgment.

In an action brought in a court specified in the last section, final judgment, in favor of the plaintiff, must specify the amount of the lien, and direct a sale of the chattel to satisfy the same and the costs, if any, by a referee appointed thereby, or an officer designated therein, in like manner as where a sheriff sells personal property by virtue of an execution; and the application by him of the proceeds of the sale, less his fees and expenses, to the payment of the amount of the lien, and the costs of the action. It must also provide for the payment of the surplus to the owner of the chattel, and for the safe keeping of the surplus, if necessary, until it is claimed by him. If a defendant, upon whom the summons is personally served, is liable for the amount of the lien, or for any part thereof, it may also award payment accordingly.

Derivation: Code Civil Procedure, § 1739.

§ 209. Action in inferior court.

Where the action is brought in a court, other than one of those specified in section two hundred and seven, if the plaintiff is not in possession of the chattel, a warrant, commanding the proper officer to seize the chattel, and safely keep it to abide the judgment, may be issued, in like manner as a warrant of attachment may be issued in an action founded upon a contract, brought in the same court; and the provisions of law, applicable to a warrant of attach-

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ment, issued out of that court, apply to a warrant, issued as prescribed in this section, and to the proceedings to procure it, and after it has been issued; except as otherwise specified in the judgment. A judgment in favor of the plaintiff, in such an action, must correspond to a judgment, rendered as prescribed in the last section, except that it must direct the sale of the chattel by an officer to whom an execution, issued out of the court, may be directed; and the payment of the surplus, if its safekeeping is necessary, to the county treasurer, for the benefit of the owner.

Derivation: Code Civil Procedure, § 1740.

§ 210. Application.

Sections two hundred and six to two hundred and nine inclusive do not affect any existing right or remedy to foreclose or satisfy a lien upon a chattel, without action; and they do not apply to a case, where another mode of enforcing a lien upon a chattel is specially prescribed by law.

Derivation: Code Civil Procedure, § 1741.

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ARTICLE 10.

CHATTEL MORTGAGES.

SECTION 230. Chattel mortgage to be filed.
231. Corporate mortgages against real and personal property.
232. Where filed.
233. Filing and entry.
234. Fees.
235. Mortgage invalid after one year, unless statement is filed.
236. Duration of lien of mortgage on canal craft.
237. Copies to be evidence of certain facts.
238. Mortgage, how discharged of record.

§ 230. Chattel mortgages to be filed.

Every mortgage or conveyance intended to operate as a mortgage of goods and chattels or of any canal boat, steam-tug, scow or other craft, or the appurtenances thereto, navigating the canals of the state, which is not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things mortgaged, is absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the mortgage, or a true copy thereof, is filed as directed in this article. This article shall not apply to agreements creating liens upon merchandise or the proceeds thereof for the purpose of securing the repayment of loans or advances made or to be made upon the security of said merchandise and the payment of commissions or other charges provided for by such agreement, where the conditions specified in section forty-five of the personal property law are complied with, nor shall this article apply to the mortgage or pledge of or lien upon stocks or bonds mortgaged or pledged to secure payment of a loan, which stocks or bonds, by the terms of a written instrument creating such mortgage, pledge or lien and setting forth the conditions of such loan, are to be delivered to the lender on the day such loan is made, and every such mortgage, pledge or lien, of such securities, shall be valid as against creditors of such mortgagor or pledgor, provided, however, that if such securities are not delivered to the

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pledgee or mortgagee on the day such loan is made, the mortgage, lien or pledge therein intended to be created shall be absolutely void and of no effect as against the creditors of such mortgagor, pledgor or lienor unless such instrument, or a true copy thereof, is filed as directed in this article, on the day following the making of such loan, and provided also that every such mortgage, pledge or lien shall be absolutely void as against purchasers, pledgees or mortgagees in good faith of such stocks or bonds provided such stocks or bonds are delivered to such purchaser, pledgee or mortgagee at the time of such purchase, pledge or mortgage. (Amended by L. 1911, ch. 326; L. 1916, ch. 348, in effect April 27, 1916.)

Derivation: Lien Law, § 90, as amended by L. 1900, ch. 248, § 1.

§ 231. Corporate mortgages against real and personal property.

Mortgages creating a lien upon real and personal property, executed by a corporation as security for the payment of bonds issued by such corporation, or by any telegraph, telephone or electric light corporation, and recorded as a mortgage of real property in each county where such property is located or through which the line of such telegraph, telephone or electric light corporation runs, need not be filed or refiled as chattel mortgages.

Derivation: Lien Law, § 91.

§ 232. Where filed.

An instrument, or a true copy thereof, if intended to operate as a mortgage of a canal boat, steam tug, scow or other craft, or of the appurtenances thereto, navigating the canals of this state, must be filed in the office of the superintendent of public works, and need not be filed elsewhere. Every other chattel mortgage, or an instrument intended to operate as such, or a true copy thereof, must be filed in the town or city where the mortgagor, if a resident of the state, resides at the time of the execution thereof, and if not a resident, in the city or town where the property mortgaged is at the time of the execution of the mortgage. If there is more than one mortgagor, the mortgage, or a certified copy thereof, must be filed in each city or town within the state where each mortgagor resides at the time of the execution thereof. In the city of New

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York, such instrument must be filed as follows, namely: In the borough of Brooklyn in said city, such instrument shall be filed in the office of the register of the county of Kings; in the borough of Queens in said city, in the office of the clerk of Queens county; in the borough of Richmond in said city, in the office of the clerk of the county of Richmond; in the borough of Manhattan in said city, in the office of the register of the county of New York, and in the borough of the Bronx in said city, in the office of the register of the county of Bronx. In every other city or town of the state, in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it must be filed therein. If the chattels mortgaged are in the city of New York at the time of the execution of the mortgage, the mortgage or a true copy thereof must be filed in the county where the mortgagor alleges to reside at the time of the execution of the mortgage, and in the county where the property is situated. All liens and mortgages, including books and records pertaining thereto, now on file in the comptroller's office, shall be transferred to the office of the superintendent of public works, who shall preserve the same in his department, and who shall be vested with full power and authority to do and perform any and all things relating thereto in like manner and with the same force and effect as heretofore done and performed by the comptroller. (Amended by L. 1910, ch. 182; L. 1915, ch. 27, in effect March 4, 1915.)

Derivation: Lien Law, § 92, as amended by L. 1900, ch. 248, § 2, and L. 1901, ch. 219, § 1.

§ 233. Filing and entry.

Such officers shall file every such instrument presented to them for that purpose, and indorse thereon its number and time of its receipt. They shall enter in a book, provided for that purpose, in separate columns, the names of all the parties to each mortgage so filed, arranged in alphabetical order, under the head of "mortgagors" and "mortgagees," the number of such mortgage or copy and the date of the filing thereof; and, if the mortgage be upon a craft navigating the canals, and filed in the office of the superintendent of public works, the name of the craft shall also be in-

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serted. In the city of New York such officers shall in addition to the entry aforesaid enter in another book provided for that purpose a statement of the premises in which the chattels mortgaged are contained, arranged in alphabetical order, under the name of the street or avenue where the premises are situated and giving the number of such mortgage or copy and the date of the filing thereof. In case no street or avenue is mentioned in the description, in the mortgage or copy, of the premises in which the chattels are contained, then a statement of such premises shall be entered under the title "miscellaneous." Except in the city of New York such officers at the time of filing of such instrument shall, upon request, issue to the person filing the same receipt in writing, which shall contain the names of the parties to the mortgage, its date, amount and the date and time of filing thereof. (Amended by L. 1910, ch. 182, in effect Apr. 28, 1910.)

Derivation: Lien Law, § 93, as amended by L. 1900, ch. 248, § 3; L. 1902, ch. 64, § 1, and L. 1906, ch. 381, § 1.

§ 234. Fees.

The several clerks and registers are entitled to receive for services hereunder, the following fees: For filing each instrument, or copy, six cents; for issuing a receipt for the same, six cents; for entering the same as aforesaid, six cents; for searching for each paper, six cents; and the like fees for certified copies of such instruments or copies as are allowed by law to clerks of counties for copies and certificates of records kept by them. The superintendent of public works is entitled to receive the following fees for services performed under this article, for the use of the state: For filing each instrument or copy and entering the same, twenty-five cents; for searching for each paper, twenty-five cents; and the like fees for certified copies of such instruments or copies, as are allowed by law to be charged by the superintendent of public works for copies and certificates of records kept in his office. No officer is required to file or enter any such paper, or furnish a copy thereof, or issue a receipt therefor, until his lawful fees are paid. (Amended by L. 1910, ch. 182, in effect Apr. 28, 1910.)

Derivation: Lien Law, § 94, as amended by L. 1906, ch. 381, § 2.

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§ 235. Mortgage invalid after one year, unless statement is filed.

A chattel mortgage, except as otherwise provided in this article, shall be invalid as against creditors of the mortgagor, and against subsequent purchasers or mortgagees in good faith, after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing, unless,

1. Within thirty days next preceding the expiration of each such term, a statement containing a description of such mortgage, the name of the parties, the time when and place where filed, the interest of the mortgagee or any person who has succeeded to his interest in the property claimed by virtue thereof, or

2. A copy of such mortgage and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the mortgagee or of any person who had succeeded to his interest in the mortgage, is filed in the proper office in the city or town where the mortgagor then resided, if he is then a resident of the town or city where a mortgage or a copy thereof or such statement was last filed; if not such resident, but a resident of the state, a true copy of such mortgage, together with such statement, shall be filed in the proper office of the town or city where he then resides; and if not a resident of the state, then in the proper office of the city or town where the property so mortgaged was at the time of the execution of the mortgage. Where the chattels mortgaged were located in the city of New York at the time of the execution of the mortgage, a copy of such mortgage and its indorsements, together with a statement attached thereto, or indorsed thereon, showing the interest of the mortgagee or of any person who has succeeded to his interest in the mortgage, must be filed in the same office or offices where the original mortgage or a copy thereof was filed at the time of the execution of the same; provided, however, that where the mortgagor was a resident of the borough of the Bronx in the city of New York at the time of the execution of such mortgage, then a copy of such mortgage as above described must be filed in the office of the register of the county of Bronx and also in the office of the register or of the county clerk, in case there is no register, of such county in said city in which the property so mortgaged was located at the time of the execution

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of such mortgage; if not such resident but the property so mortgaged was located in the borough of the Bronx in said city at the time of the execution of such mortgage, then a copy of such mortgage as above described must be filed in the office of the register of the county of Bronx and also in the office of the register or of the county clerk, in case there is no register, of such county in said city in which the mortgagor resided when such mortgage was executed; provided, further, that where the mortgagor was a resident of the borough of the Bronx in the city of New York at the time of the execution of such mortgage and the property so mortgaged was located in the borough of the Bronx at such time, then a copy of such mortgage as above described must be filed in the office of the register of the county of the Bronx and need not be filed in any other office, and provided further that where the vendee of a contract for the conditional sale of goods and chattels not attached to a building was a resident of the borough of the Bronx in said city of New York at the time of the execution of such contract, then a copy of such contract, together with a statement as required herein in the case of chattel mortgages, must be filed in the office of the register of the county of Bronx; if not such resident nor a resident of any other borough within the city of New York nor of this state at the time of the execution of such contract but the property so sold was in the borough of the Bronx in said city when such contract was executed, then a copy of such contract and a statement as aforesaid must be filed in the office of the register of the county of Bronx. Except in the city of New York, the officer with whom such a renewal statement or copy of a mortgage is filed, shall upon request issue to the person filing the same a receipt in writing, which shall contain the names of the parties to the instrument so filed, its date, amount and the date and time of filing thereof. (Amended by L. 1915, ch. 608, in effect May 12, 1915.)

Derivation: Lien Law, § 95, as amended by L. 1901, ch. 219, § 2, and L. 1906, ch. 381, § 3.

§ 236. Duration of lien of mortgage on canal craft.

Every mortgage upon a canal boat or other craft navigating the canals of this state, filed as provided in this article, shall be valid

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as against the creditors of the mortgagor and against subsequent purchasers or mortgagees in good faith, as long as the debt which the mortgage secures is enforceable. From the time of filing, every such mortgage shall have preference and priority over all other claims and liens, not existing at the time of such filing.

Derivation: Lien Law, § 96.

§ 237. Copies to be evidence of certain facts.

A copy of any such original instrument, or of a copy thereof, including any statement relating thereto, certified by the officer with whom the same is filed, may be received in evidence, but only of the fact that such instrument, or copy, or statement was received and filed according to the indorsement thereon; and the original indorsement upon such instrument or copy may be received in evidence only of the facts stated in such indorsement.

Derivation: Lien Law, § 97.

§ 238. Mortgage, how discharged of record.

Upon the payment or satisfaction of a chattel mortgage, the mortgagee, his assignee or legal representative, upon the request of the mortgagor or of any person interested in the mortgaged property, must sign and acknowledge a certificate setting forth such payment or satisfaction. The officer with whom the mortgage, or a copy thereof is filed, must, on receipt of such certificate, file the same in his office, and write the word "discharged" in the book where the mortgage is entered, opposite the entry thereof, and the mortgage is thereby discharged.

Derivation: Lien Law, § 98.

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ARTICLE 11.

LAWS REPEALED; WHEN TO TAKE EFFECT.

SECTION 250. Laws repealed.
251. When to take effect.

§ 250. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

Derivation: Lien Law, § 120.

§ 251. When to take effect.

This chapter shall take effect immediately.

Derivation: Lien Law, § 121.

SCHEDULE OF LAWS REPEALED.

Revised Statutes....	Part 3, chapter 8, title 8, ...	All
Laws of	Chapter	Section
1798.....	1.....	All (22d Sess., 1st Meet.)
1817.....	60.....	All
1825.....	247.....	All
1828.....	21.....	1, ¶¶ 40, 447 (2d Meet.)
1830.....	179.....	1, 2, 7, 8
1830.....	320.....	51
1830.....	330.....	All
1831.....	318.....	All
1832.....	120.....	All
1833.....	200.....	All
1833.....	279.....	All
1840.....	185.....	All
1844.....	220.....	All
1844.....	305.....	All
1845.....	205.....	All
1846.....	184.....	All
1848.....	282.....	All
1849.....	69.....	All

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Laws of	Chapter	Section
1850.....	160.....	All
1850.....	303.....	All
1851.....	169.....	All
1851.....	513.....	All
1851.....	517.....	All
1852.....	108.....	All
1852.....	384.....	All
1853.....	335.....	All
1853.....	413.....	All
1854.....	402.....	All
1855.....	110.....	All
1855.....	404.....	All
1857.....	663.....	All
1858.....	204.....	All
1858.....	247.....	All
1859.....	79.....	All
1860.....	208.....	All
1860.....	446.....	All
1860.....	469.....	All
1862.....	478.....	All
1862.....	482.....	All
1863.....	422.....	All
1863.....	500.....	All
1864.....	366.....	All
1864.....	387.....	All
1864.....	412.....	All
1865.....	778.....	All
1866.....	752.....	All
1866.....	788.....	All
1868.....	79.....	All
1868.....	779.....	All
1869.....	558.....	All
1869.....	738.....	All
1870.....	194.....	All
1870.....	529.....	All
1871.....	188.....	All
1871.....	872.....	All
1872.....	498.....	All
1872.....	598.....	All

Digitized by Google

Laws of	Chapter	Section
1872.....	669.....	All
1872.....	691.....	All
1873.....	489.....	All
1873.....	501.....	All
1874.....	22.....	All
1874.....	551.....	All
1875.....	233.....	All
1875.....	379.....	All
1875.....	392.....	1–7
1876.....	319.....	All
1878.....	315.....	All
1879.....	171.....	All
1879.....	334.....	All
1879.....	336.....	All
1879.....	418.....	All
1879.....	509.....	All
1879.....	530.....	All
1880.....	143.....	All
1880.....	145.....	All
1880.....	440.....	All
1880.....	486.....	All
1881.....	429.....	All
1882.....	119.....	All
1883.....	383.....	All
1883.....	421.....	All
1884.....	315.....	All
1885.....	216.....	All
1885.....	273.....	All
1885.....	342.....	All
1885.....	488.....	All
1885.....	526.....	All
1886.....	88.....	All
1886.....	382.....	All
1886.....	495.....	All
1887.....	420.....	All
1887.....	458.....	All
1888.....	225.....	All
1888.....	316.....	All
1888.....	457.....	All

Digitized by Google

Laws of	Chapter	Section
1888.....	543.....	All
1891.....	171.....	All
1891.....	255.....	All
1892.....	91.....	All
1892.....	274.....	All
1892.....	629.....	All
1892.....	632.....	All
1893.....	300.....	All
1893.....	405.....	All
1893.....	684.....	All
1894.....	253.....	All
1894.....	420.....	All
1894.....	724.....	All
1895.....	161.....	All
1895.....	354.....	All
1895.....	523.....	All
1895.....	529.....	All
1895.....	673.....	All
1895.....	884.....	All
1895.....	925.....	All
1896.....	528.....	All
1896.....	601.....	All
1896.....	682.....	All
1896.....	738.....	All
1896.....	915.....	All
1897.....	418.....	1–98, 120, 121
1898.....	169.....	All
1899.....	25.....	All
1899.....	322.....	All
1899.....	369.....	All
1899.....	380.....	All
1899.....	465.....	All
1900.....	78.....	All
1900.....	248.....	1–3, 5
1901.....	219.....	All
1902.....	37.....	All
1902.....	64.....	All
1902.....	351.....	All
1904.....	246.....	All

Digitized by Google

Laws of	Chapter	Section
1904.....	261.....	All
1905.....	96.....	All
1905.....	206.....	All
1906.....	381.....	All
1906.....	687.....	All
1907.....	360.....	All
1907.....	692.....	All
1908.....	85.....	All
1908.....	238.....	All
1908.....	254.....	All
1908.....	315.....	All
1908.....	395.....	All
Code Civil Procedure.....		1737–1741
Code Civil Procedure.....		3398–3447

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INDEX TO LIEN LAW.

(REFERENCE IS MADE TO SECTIONS.)

ACTIONS OR PROCEEDINGS: SECTION
to enforce liens on real property. (*See Mechanics' Liens.*)
for enforcement of lien on vessels. (*See Vessels.*)
to enforce lien on monuments, etc. (*See Monuments, etc.*)
for enforcement of lien of stone cutter. (*See Stone, etc.*)
for enforcement of liens on personal property. (*See Personal Property.*)

ANIMALS:
lien of bailee of 183
enforcement of liens by bailee of. (*See Personal Property.*)

APARTMENT HOTELS: *See Hotel Keepers.*

ARTISANS:
artisan's lien on personal property 180
enforcement of lien by. (*See Personal Property.*)

ASSIGNMENT OF LIEN: *See Mechanics' Liens; Vessels.*

AUTOMOBILES:
lien of bailee of 184
enforcement of liens by bailee of. (*See Personal Property.*)

BAILEE FOR HIRE:
lien of 186
enforcement of liens by 186

BAILEE OF ANIMALS:
lien of 183
enforcement of liens by. (*See Personal Property.*)

BAILEE OF MOTOR VEHICLES:
lien of 184
enforcement of liens by. (*See Personal Property.*)

BOARDING HOUSE KEEPERS:
liens of 181
enforcement of liens by. (*See Personal Property.*)

BUILDING LOAN CONTRACT:
filing, etc., of 22

BULLS, LIENS FOR SERVICE OF:
on cow and calf 160
notice, contents of 160
when and where filed 160
duration of 160
statement of pedigree, filing of 161
certificate of county clerk 161
fees of clerk 161
copy to be posted 162
penalty 163

CANAL BOATS:
chattel mortgages on. (*See Chattel Mortgages.*)

CEMETARY STRUCTURES: *See Monuments, etc.*

CHATTELS: *See Personal Property.*

Digitized by Google

CHATTEL MORTGAGES: SECTION
must be filed 230
corporate mortgages against real and personal property to secure bonds 231
where filed 232
filing and entry of 233
receipt issued for 233
fees for 234
refiling and statement 235
mortgage lien invalid after one year unless refiled 235
duration of, on canal craft 236
copies as evidence 237
discharge from record 238

CONSIGNEES:
lien of, on merchandise 182
enforcement of liens by. (*See Personal Property.*)

CONTRACTOR: *See Mechanics' Liens.*
definition of 2

CORPORATIONS:
corporate mortgages against real and personal property to secure bonds 231

DEFINITIONS:
lienor 2
real property 2
owner 2
improvement 2
public improvement 2
contractor 2
sub-contractor. 2
laborer 2
material man 2

DISCHARGE OF LIEN: *See Chattel Mortgages; Mechanics' Liens; Stone, etc.; Vessels.*

DRAYMEN:
lien of 187

DURATION OF LIEN: *See Chattel Mortgages; Mechanics' Liens; Stallions; Stone, etc.: Vessels.*

ENFORCEMENT OF LIENS: *See Mechanics' Liens; Monuments, etc.; Personal Property; Stone, etc.; Vessels.*

FACTORS:
lien of, on merchandise 182
enforcement of liens by. (*See Personal Property.*)

FORECLOSURE:
enforcement of a mechanics' lien by foreclosure 43
of mechanics' lien on public improvement. (*See Public Improvement.*)
of mechanics' lien on property of railroad corporation. (*See Railroad.*)

GARAGE KEEPERS:
lien of 184
enforcement of liens by. (*See Personal Property.*)

GRAVESTONES: *See Monuments, etc.*

Digitized by Google

HOTEL KEEPERS: SECTION
lien of hotel, apartment hotel, inn, boarding house and lodging house keepers 181
enforcement of lien by. (*See Personal Property.*)

IMPROVEMENT: *See Mechanics' Liens.*
definition of 2

INN KEEPERS: *See Hotel Keepers.*

LABORER: *See Mechanics' Liens; Stone, etc.; Vessels.*
definition of 2

LIENOR: *See Artisans; Bailee of Animals; Bailee of Motor Vehicles; Boarding House Keepers; Factors; Hotel Keepers; Lodging House Keepers; Mechanics' Liens; Monuments, etc.; Silk Goods Manufacturers; Stallions; Stone, etc.; Vessels.*
definition of 2

LIVERY STABLE KEEPERS:
lien of 183
enforcement of liens by. (*See Personal Property.*)

LODGING HOUSE KEEPERS:
liens of 181
enforcement of liens by. (*See Personal Property.*)

MANUFACTURERS OF SILK GOODS:
lien of 185
enforcement of liens by. (*See Personal Property.*)

MATERIAL MAN: *See Mechanics' Liens; Monuments, etc.; Vessels.*
definition of 2

MECHANICS' LIENS ON REAL PROPERTY: *See Public Improvements.*
who may have 3
extent of 4
removal of property subject to 4
amount, owner liable for 4
railroads, liens for labor on 6
creation of 6
notice, contents, etc. 6
filing and service of 6
advance payments, liability of owner for 7
mortgages, collusive, void as to existing liens 7
contract, terms of, may be demanded 8
refusal, penalty for 8
notice, contents of 9
misdescription, effect of 9
verification. 9
when must be filed 10
where filed 10
where property is in two or more counties 10
lien docket to be kept by county clerk 10
service of copy of 11
posting copy, in what case 11

Digitized by Google

MECHANICS' LIEN ON REAL PROPERTY.—(Continued). SECTION
payment by owner before service of notice 11
priority of, over conveyances, judgments, assignments, advances etc. 13
upon particular building or premises 13
laborers, preferred lienors 13
assignment of 14
contents 14
filing 14
failure to file, effect of 14
assignments of contracts and orders to be filed 15
duration of 17
order extending 17
lis pendens, failure to file, effect of 17
discharge of, generally 19
certificate of lienor 19
failure to begin foreclosure 19
order of court 19
execution of undertaking 19
payment of money into court 20
building loan contract 22
execution and modification of 22
filing 22
effect of failure to 22
fees for 22
construction of article 23
subordination of liens after agreement with owner 26
subordination of liens after agreement with contractor 27
lien of certain judgments postponed 28
subordination of liens to subsequent mortgage 29
subordination of notices of lis pendens 30
discharge of liens on sale of real property 31
certain liens and claims not to be affected 32
certain sections not to apply to laborers' liens 33
enforcement of 24
construction of article as to 40
to be enforced by action 41
jurisidiction of action 41
action in a court of record 43
consolidation of actions 43
parties to action in court of record 44
equities of lienors to be determined 45

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MECHANICS' LIEN ON REAL PROPERTY.—(Continued). SECTION
enforcement of (continued)
action in court not of record 46
summons and complaint in 46
how summons served when personal service cannot be made 47
proceedings on return of summons 48
answer 48
judgment by default 48
issue, how tried 49
judgment 49
execution 50
appeals from judgments in courts not of record 51
transcripts of judgment in courts not of record 52
costs and disbursements 53
judgment in case of failure to establish a lien 54
offer to pay money into court or to deposit securities in discharge of lien 55
preference over contractors 56
judgment may direct delivery of property in lieu of money 52
judgment for deficiency 58
vacating of a mechanics' lien by order of court 59
judgment in action to foreclose mechanics' lien on property of railroad corporation 61
bringing in new parties 62
service of answer on state or municipal corporation 63
award of personal judgment by court or referee 64

MINING: *See Stone, etc.*

MONUMENTS, GRAVESTONES, CEMETARY STRUCTURES, LIENS ON: *See Stone, etc.*
how created 120
notice, contents of 121
filing, when and where 120, 121
service of copy 121
proceedings to enforce 122
notice of sale, contents 122
publication and service 122
judgment, effect of 122
proceeds of sale, distribution of 123
officers of cemetary associations, duties of 124

MORTGAGES:
effect of collusive mortgages on mechanics' liens 7

MOTOR VEHICLES:
lien of bailee of 184
enforcement of liens by bailee of. (*See Personal Property.*)

NOTICE OF LIENS. *See Chattel Mortgages; Mechanics' Liens; Monuments, etc.; Stallions; Stone, etc.; Vessels.*

OWNER:
definition of 2

PAYMENT INTO COURT:
discharge of lien by payment of money into court 20, 55

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PERSONAL PROPERTY: SECTION
liens on, (*See Artisans; Bailee of Animals; Bailee of Motor Vehicles; Boarding House Keepers; Chattel Mortgages; Factors; Hotel Keepers; Lodging House Keepers; Monuments, etc.; Silk Goods Manufacturers; Stallions; Stone, etc.; Vessels.*
enforcement of liens on:
sale of personal property to satisfy a lien 200
notice of sale 201
sale to be advertised 202
redemption before sale 203
disposition of proceeds of sale 204
remedy by sale not exclusive 205
enforcement by action 206
when and in what courts 206
warrant to seize chattels 207
proceedings thereupon 207
judgment 208
action in inferior court 209
remedy by action not exclusive 210
PRIORITIES: *See Mechanics' Liens.*
PROCEEDINGS: *See Actions or Proceedings.*
PUBLIC IMPROVEMENTS:
definition of 2
liens under contracts for 5
extent of 5
notice of lien on account of 12
when and where filed 12
lien book to be kept by comptroller 12
assignment of contracts 16
filing 16
failure to file, effect of 16
duration of lien 18
order extending 18
discharge of 21
certificate of lienor 21
lapse of time 21
satisfaction of judgment 21
deposit of contractor 21
execution of undertaking 21
priorities of 25
laborers, preferred lienors 25
laborers, subcontractors or material men over contractors 56
enforcement of lien under contracts for 42
judgment in action to foreclose lien on account of 60
QUARRYING: *See Stones, etc.*
RAILROADS:
liens for labor on 6
creation of 6
extent of 6
notice, contents, etc 6
filing and service of 6
judgment in action to foreclose lien on property of 61

Digitized by Google

REAL PROPERTY: *See Mechanics' Liens on Real Property.* SECTION
definition of 2

SALE:
of personal property to satisfy lien. (*See Personal Property.*)

SILK GOODS MANUFACTURERS AND THROWSTERS:
lien of 185
enforcement of liens by. (*See Personal Property.*)

STALLIONS, LIENS FOR SERVICE OF:
on mare and foal 160
notice, contents of 160
when and where filed 160
duration of 160
statement of pedigree, filing of 161
certificate of county clerk 161
fees of clerk 161
copy to be posted 162
penalty 163

STONE, LIENS FOR LABOR ON:
creation of 140
notice of 140
contents 140
filing and service of 140
duration and effect of 141
liability of owner 141
does not follow material 141
discharge of 142
failure to bring action 142
written consent of lienor 142
undertaking of owner 142

SUB-CONTRACTOR: *See Mechanics' Liens.*
definition of 2

TRUCKMEN:
lien of 187

VACATING LIEN:
vacating of mechanics' lien by order of court 59

VESSELS:
chattel mortgages on vessels navigating the canals. (*See Chattel Mortgages.*)
liens on, for what debts created 80
on vessels causing damage 81
notice of lien, when to be filed 82
duration of lien 83
assignment of lien 84
enforcement of lien 85
application for warrant 86
undertaking to accompany application 87
warrant 88
execution thereof 88
order to show cause 89
contents 89
service 89
notice of issuance of warrant to be published and served 90

Digitized by Google

VESSELS.—(Continued). SECTION
enforcement of (continued)
proceedings upon return of order to show cause..... 91
trial of issue..... 91
order of sale, when made..... 92
sale and proceeds..... 93
notice of the distribution of the proceeds of sale..... 94
liens for which no warrants are issued..... 95
contested claims..... 96
trials of issue and appeal 97
distribution of proceeds 98
payment of uncontested claims 99
distribution of surplus 100
application for a discharge of warrant..... 101
undertaking to accompany application for discharge..... 102
discharge of warrant..... 103
action on undertaking..... 104
costs of proceedings..... 105
sheriff must return warrant..... 106
discharge of lien before issue of warrant..... 107

WHARFING: *See Vessels.*

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NEGOTIABLE INSTRUMENTS LAW.

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NOTE.

No changes were made by the consolidators to the Negotiable Instruments Law except to renumber the articles and change here and there the wording of an article or section heading. No material was added to the law and the section numbers were not changed. Therefore it has not been necessary to prepare any tables, nor to insert any derivation notes under the sections.

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NEGOTIABLE INSTRUMENTS LAW.

(L. 1909, CHAP. 43, BEING CHAP. 38 OF THE CONSOLIDATED LAWS. IN EFFECT FEB. 17, 1909.)

ARTICLE 1. Short title; definitions (§§ 1, 2).
2. General provisions (§§ 3–7).
3. Form and interpretation (§§ 20–42).
4. Consideration (§§ 50–55).
5. Negotiation (§§ 60–80).
6. Rights of holder (§§ 90–98).
7. Liabilities of parties (§§ 110–119).
8. Presentment for payment (§§ 130–148).
9. Notice of dishonor (§§ 160–189).
10. Discharge (§§ 200–206).
11. Bills of exchange; form and interpretation (§§ 210–216).
12. Acceptance (§§ 220–230).
13. Presentment for acceptance (§§ 240–248).
14. Protest (§§ 260–268).
15. Acceptance for honor (§§ 280–289).
16. Payment for honor (§§ 300–306).
17. Bills in sets (§§ 310–315).
18. Promissory notes and checks (§§ 320–326).
19. Notes given for patent rights and for a speculative consideration (§§ 330–332).
20. Laws repealed; when to take effect (§§ 340–341).

ARTICLE 1.

SHORT TITLE; DEFINITIONS.

SECTION 1. Short title.
2. Definitions.

§ 1. Short title.

This chapter shall be known as the "Negotiable Instruments Law."

§ 2. Definitions.

In this chapter, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counter-claim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

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"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument, complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed, and "writing" includes print.

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ARTICLE 2.

GENERAL PROVISIONS.

SECTION 3. Person primarily liable on instrument.
4. Reasonable time, what constitutes.
5. Time, how computed; when last day falls on holiday.
6. Application of chapter.
7. Law merchant; when governs.

§ 3. Person primarily liable on instrument.

The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable.

§ 4. Reasonable time, what constitutes.

In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case.

§ 5. Time, how computed; when last day falls on holiday.

Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day.

§ 6. Application of chapter.

The provisions of this chapter do not apply to negotiable instruments made and delivered prior to October first, eighteen hundred and ninety-seven.

§ 7. Law merchant; when governs.

In any case not provided for in this chapter the rules of the law merchant shall govern.

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ARTICLE 3.

FORM AND INTERPRETATION.

SECTION 20. Form of negotiable instrument.
21. Certainty as to sum; what constitutes.
22. When promise is unconditional.
23. Determinable future time; what constitutes.
24. Additional provisions not affecting negotiability.
25. Omissions; seal; particular money.
26. When payable on demand.
27. When payable to order.
28. When payable to bearer.
29. Terms, when sufficient.
30. Date, presumption as to.
31. Ante-dated and post-dated.
32. When date may be inserted.
33. Blanks; when may be filled.
34. Incomplete instrument not delivered.
35. Delivery; when effectual; when presumed.
36. Construction where instrument is ambiguous.
37. Liability of person signing in trade or assumed name.
38. Signature by agent; authority; how shown.
39. Liability of person signing as agent.
40. Signature by procuration; effect of.
41. Effect of indorsement by infant or corporation.
42. Forged signature; effect of.

§ 20. Form of negotiable instrument.

An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer;

2. Must contain an unconditional promise or order to pay a sum certain in money;

3. Must be payable on demand, or at a fixed or determinable future time;

4. Must be payable to order or to bearer; and

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

§ 21. Certainty as to sum; what constitutes.

The sum payable is a sum certain within the meaning of this chapter although it is to be paid:

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1. With interest; or

2. By stated instalments; or

3. By stated instalments, with a provision that upon default in payment of any instalment or of interest, the whole shall become due; or

4. With exchange, whether at a fixed rate or at the current rate; or

5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

§ 22. When promise is unconditional.

An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

§ 23. Determinable future time; what constitutes.

An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

§ 24. Additional provisions not affecting negotiability.

An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

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3. Waives the benefit of any law intended for the advantage or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

§ 25. Omissions; seal; particular money.

The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

§ 26. When payable on demand.

An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand.

§ 27. When payable to order.

The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawer or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

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Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

§ 28. When payable to bearer.

The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or non-existing person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank.

§ 29. Terms, when sufficient.

The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements hereof.

§ 30. Date, presumption as to.

Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement as the case may be.

§ 31. Ante-dated and post-dated.

The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

§ 32. When date may be inserted.

Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

§ 33. Blanks; when may be filled.

Where the instrument is wanting in any material particular, the

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person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument, when completed, may be enforced against any person who became a party thereto prior to its completion, it must be filled up strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

§ 34. Incomplete instrument not delivered.

Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

§ 35. Delivery; when effectual; when presumed.

Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

§ 36. Construction where instrument is ambiguous.

Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in

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figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, references may be had to the figures to fix the amount;

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

§ 37. Liability of person signing in trade or assumed name.

No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

§ 38. Signature by agent; authority; how shown.

The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

§ 39. Liability of person signing as agent.

Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

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§ 40. Signature by procuration; effect of.

A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

§ 41. Effect of indorsement by infant or corporation.

The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

§ 42. Forged signature; effect of.

Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

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ARTICLE 4.

CONSIDERATION.

SECTION 50. Presumption of consideration.
51. What constitutes consideration.
52. What constitutes holder for value.
53. When lien on instrument constitutes holder for value.
54. Effect of want of consideration.
55. Liability of accommodation party.

§ 50. Presumption of consideration.

Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

§ 51. What constitutes consideration.

Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes value; and is deemed such whether the instrument is payable on demand or at a future time.

§ 52. What constitutes holder for value.

Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who became such prior to that time.

§ 53. When lien on instrument constitutes holder for value.

Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

§ 54. Effect of want of consideration.

Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto whether the failure is an ascertained and liquidated amount or otherwise.

§ 55. Liability of accommodation party.

An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value

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therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

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ARTICLE 5.

NEGOTIATION.

SECTION 60. What constitutes negotiation.
61. Indorsement; how made.
62. Indorsement must be of entire instrument.
63. Kinds of indorsement.
64. Special indorsement; indorsement in blank.
65. Blank indorsement; how changed to special indorsement.
66. When indorsement restrictive.
67. Effect of restrictive indorsement; rights of indorsee.
68. Qualified indorsement.
69. Conditional indorsement.
70. Indorsement of instrument payable to bearer.
71. Indorsement where payable to two or more persons.
72. Effect of instrument drawn or indorsed to a person as cashier.
73. Indorsement where name is wrongly designated or misspelled.
74. Indorsement in representative capacity.
75. Time of indorsement; presumption.
76. Place of indorsement; presumption.
77. Continuation of negotiable character.
78. Striking out indorsement.
79. Transfer without indorsement; effect of.
80. When prior party may negotiate instrument.

§ 60. What constitutes negotiation.

An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

§ 61. Indorsement; how made.

The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

§ 62. Indorsement must be of entire instrument.

The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer

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the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

§ 63. Kinds of indorsement.

An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

§ 64. Special indorsement; indorsement in blank.

A special indorsement specifies the person to whom, or to whose order the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery.

§ 65. Blank indorsement; how changed to special indorsement.

The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

§ 66. When indorsement restrictive.

An indorsement is restrictive, which either:

1. Prohibits the further negotiation of the instrument; or
2. Constitutes the indorsee the agent of the indorser; or
3. Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

§ 67. Effect of restrictive indorsement; right of indorsee.

A restrictive indorsement confers upon the indorsee the right:

1. To receive payment of the instrument;
2. To bring any action thereon that the indorser could bring;
3. To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

§ 68. Qualified indorsement.

A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

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§ 69. Conditional indorsement.

Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated, will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

§ 70. Indorsement of instrument payable to bearer.

Where an instrument, payable to bearer, is indorsed specially, it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

§ 71. Indorsement where payable to two or more persons.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

§ 72. Effect of instrument drawn or indorsed to a person as cashier.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation, or the indorsement of the officer.

§ 73. Indorsement where name is wrongly designated or misspelled.

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he think fit, his proper signature.

§ 74. Indorsement in representative capacity.

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

§ 75. Time of indorsement; presumption.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

§ 76. Place of indorsement; presumption.

Except where the contrary appears every indorsement is pre-

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sumed prima facie to have been made at the place where the instrument is dated.

§ 77. Continuation of negotiable character.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

§ 78. Striking out indorsement.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

§ 79. Transfer without indorsement; effect of.

Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made.

§ 80. When prior party may negotiate instrument.

Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, re-issue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

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ARTICLE 6.

RIGHTS OF HOLDER.

SECTION 90. Right of holder to sue; payment.
91. What constitutes a holder in due course.
92. When person not deemed holder in due course.
93. Notice before full amount paid.
94. When title defective.
95. What constitutes notice of defect.
96. Rights of holder in due course.
97. When subject to original defenses.
98. Who deemed holder in due course.

§ 90. Right of holder to sue; payment.

The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument.

§ 91. What constitutes a holder in due course.

A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face;

2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

3. That he took it in good faith and for value;

4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

§ 92. When person not deemed holder in due course.

Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

§ 93. Notice before full amount paid.

Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

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§ 94. When title defective.

The title of a person who negotiates an instrument is defective within the meaning of this chapter when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

§ 95. What constitutes notice of defect.

To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

§ 96. Rights of holder in due course.

A holder in due course holds the instrument free from any defect of title of prior parties and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

§ 97. When subject to original defenses.

In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were non-negotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

§ 98. Who deemed holder in due course.

Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as a holder in due course. But the last mentioned rule does not apply in favor of a party who became bound on the instrument prior to the acquisition of such defective title.

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ARTICLE 7.

LIABILITIES OF PARTIES.

SECTION 110. Liability of maker.
111. Liability of drawer.
112. Liability of acceptor.
113. When person deemed indorser.
114. Liability of irregular indorser.
115. Warranty; where negotiation by delivery or by a qualified indorsement.
116. Liability of general indorser.
117. Liability of indorser where paper negotiable by delivery.
118. Order in which indorsers are liable.
119. Liability of agent or broker.

§ 110. Liability of maker.

The maker of a negotiable instrument by making it engages that he will pay it according to its tenor; and admits the existence of the payee and his then capacity to indorse.

§ 111. Liability of drawer.

The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted and paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

§ 112. Liability of acceptor.

The acceptor by accepting the instrument engages that he will pay it acording to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

2. The existence of the payee and his then capacity to indorse.

§ 113. When person deemed indorser.

A person placing his signature upon an instrument otherwise

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than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

§ 114. Liability of irregular indorser.

Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

2. If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

§ 115. Warranty; where negotiation by delivery or by a qualified indorsement.

Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be;

2. That he has a good title to it;

3. That all prior parties had capacity to contract;

4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision three of this section do not apply to persons negotiating public or corporate securities, other than bills and notes.

§ 116. Liability of general indorser.

Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matter and things mentioned in subdivisions one, two and three of the next preceding section; and,

2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings

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on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

§ 117. Liability of indorser where paper negotiable by delivery.

Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

§ 118. Order in which indorsers are liable.

As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

§ 119. Liability of agent or broker.

Where a broker or other agent negotiates an instrument without indorsement, he incurs all the liabilities prescribed by section one hundred and fifteen of this chapter, unless he discloses the name of his principal, and the fact that he is acting only as agent.

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ARTICLE 8.

PRESENTMENT FOR PAYMENT.

SECTION 130. Effect of want of demand on principal debtor.
131. Presentment where instrument is not payable on demand.
132. What constitutes a sufficient presentment.
133. Place of presentment.
134. Instrument must be exhibited.
135. Presentment where instrument payable at bank.
136. Presentment where principal debtor is dead.
137. Presentment to persons liable as partners.
138. Presentment to joint debtors.
139. When presentment not required to charge the drawer.
140. When presentment not required to charge the indorser.
141. When delay in making presentment is excused.
142. When presentment may be dispensed with.
143. When instrument dishonored by non-payment.
144. Liability of person secondarily liable, when instrument dishonored.
145. Time of maturity.
146. Time; how computed.
147. Rule where instrument payable at bank.
148. What constitutes payment in due course.

§ 130. Effect of want of demand on principal debtor.

Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity and has funds there available for that purpose, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

§ 131. Presentment where instrument is not payable on demand.

Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

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§ 132. What constitutes a sufficient presentment.

Presentment for payment, to be sufficient, must be made:

1. By the holder, or by some person authorized to receive payment on his behalf;

2. At a reasonable hour on a business day;

3. At a proper place as herein defined;

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

§ 133. Place of presentment.

Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented;

2. Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

§ 134. Instrument must be exhibited.

The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

§ 135. Presentment where instrument payable at bank.

Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

§ 136. Presentment where principal debtor is dead.

Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if with the exercise of reasonable diligence, he can be found.

§ 137. Presentment to persons liable as partners.

Where the persons primarily liable on the instrument are liable

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as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

§ 138. Presentment to joint debtors.

Where there are several persons not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

§ 139. When presentment not required to charge the drawer.

Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

§ 140. When presentment not required to charge the indorser.

Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented.

§ 141. When delay in making presentment is excused.

Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

§ 142. When presentment may be dispensed with.

Presentment for payment is dispensed with:

1. Where after the exercise of reasonable diligence presentment as required by this chapter cannot be made;

2. Where the drawee is a fictitious person;

3. By waiver of presentment express or implied.

§ 143. When instrument dishonored by non-payment.

The instrument is dishonored by non-payment when:

1. It is duly presented for payment and payment is refused or cannot be obtained; or

2. Presentment is excused and the instrument is overdue and unpaid.

§ 144. Liability of person secondarily liable, when instrument dishonored.

Subject to the provisions of this chapter, when the instrument is dishonored by non-payment, an immediate right of recourse to all parties secondarily liable thereon, acrues to the holder.

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§ 145. Time of maturity.

Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due or becoming payable on Saturday are to be presented for payment on the next succeeding business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

§ 146. Time; how computed.

Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

§ 147. Rule where instrument payable at bank.

Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

§ 148. What constitutes payment in due course.

Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

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ARTICLE 9.

NOTICE OF DISHONOR.

SECTION 160. To whom notice of dishonor must be given.
161. By whom given.
162. Notice given by agent.
163. Effect of notice given on behalf of holder.
164. Effect where notice is given by party entitled thereto.
165. When agent may give notice.
166. When notice sufficient.
167. Form of notice.
168. To whom notice may be given.
169. Notice where party is dead.
170. Notice to partners.
171. Notice to persons jointly liable.
172. Notice to bankrupt.
173. Time within which notice must be given.
174. Where parties reside in same place.
175. Where parties reside in different places.
176. When sender deemed to have given due notice.
177. Deposit in post-office; what constitutes.
178. Notice to antecedent party; time of.
179. Where notice must be sent.
180. Waiver of notice.
181. *Whom affected by waiver.
182. Waiver of protest.
183. When notice dispensed with.
184. Delay in giving notice; how excused.
185. When notice need not be given to drawer.
186. When notice need not be given to indorser.
187. Notice of non-payment where acceptance refused.
188. Effect of omission to give notice of non-acceptance.
189. When protest need not be made; when must be made.

§ 160. To whom notice of dishonor must be given.

Except as herein otherwise provided, when a negotiable instrument has been dishonored by non-acceptance or non-payment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

§ 161. By whom given.

The notice may be given by or on behalf of the holder, or by or

* So in original.

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on behalf of any party to the instrument who might be compelled to pay it to the holder, and who, upon taking it up, would have a right to reimbursement from the party to whom the notice is given.

§ 162. Notice given by agent.

Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

§ 163. Effect of notice given on behalf of holder.

Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

§ 164. Effect where notice is given by party entitled thereto.

Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

§ 165. When agent may give notice.

Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

§ 166. When notice sufficient.

A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

§ 167. Form of notice.

The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by non-acceptance or non-payment. It may in all cases be given by delivering it personally or through the mails.

§ 168. To whom notice may be given.

Notice of dishonor may be given either to the party himself or to his agent in that behalf.

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§ 169. Notice where party is dead.

When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence, he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

§ 170. Notice to partners.

Where the parties to be notified are partners notice to any one partner is notice to the firm even though there has been a dissolution.

§ 171. Notice to persons jointly liable.

Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

§ 172. Notice to bankrupt.

Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

§ 173. Time within which notice must be given.

Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by this chapter.

§ 174. Where parties reside in same place.

Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

1. If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

2. If given at his residence, it must be given before the usual hours of rest on the day following;

3. If sent by mail, it must be deposited in the post-office in time to reach him in usual course on the day following.

§ 175. Where parties reside in different places.

Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

1. If sent by mail, it must be deposited in the post-office in time to go by mail the day following the day of dishonor, or if there

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be no mail at a convenient hour on that day, by the next mail thereafter.

2. If given otherwise than through the post-office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post-office within the time specified in the last subdivision.

§ 176. When sender deemed to have given due notice.

Where notice of dishonor is duly addressed and deposited in the post-office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

§ 177. Deposit in post-office; what constitutes.

Notice is deemed to have been deposited in the post-office when deposited in any branch post-office or in any letter box under the control of the post-office department.

§ 178. Notice to antecedent party; time of.

Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

§ 179. Where notice must be sent.

Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

1. Either to the post-office nearest to his place of residence, or to the post-office where he is accustomed to receive his letters; or

2. If he live in one place, and have his place of business in another, notice may be sent to either place; or

3. If he is sojourning in another place, notice may be sent to the place where he is so sojourning.

But where the notice is actually received by the party within the time specified in this chapter, it will be sufficient, though not sent in accordance with the requirements of this section.

§ 180. Waiver of notice.

Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

§ 181. * Whom affected by waiver.

Where the waiver is embodied in the instrument itself, it is

* So in original.

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binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

§ 182. Waiver of protest.

A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor.

§ 183. When notice dispensed with.

Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged.

§ 184. Delay in giving notice; how excused.

Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

§ 185. When notice need not be given to drawer.

Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person;

2. Where the drawee is a fictitious person or a person not having capacity to contract;

3. Where the drawer is the person to whom the instrument is presented for payment;

4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

5. Where the drawer has countermanded payment.

§ 186. When notice need not be given to indorser.

Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

2. Where the indorser is the person to whom the instrument is presented for payment;

3. Where the instrument was made or accepted for his accommodation.

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§ 187. Notice of non-payment where acceptance refused.

Where due notice of dishonor by non-acceptance has been given, notice of a subsequent dishonor by non-payment is not necessary, unless in the meantime the instrument has been accepted.

§ 188. Effect of omission to give notice of non-acceptance.

An omission to give notice of dishonor by non-acceptance does not prejudice the rights of a holder in due course subsequent to the omission.

§ 189. When protest need not be made; when must be made.

Where any negotiable instrument has been dishonored it may be protested for non-acceptance or non-payment, as the case may be; but protest is not required, except in the case of foreign bills of exchange.

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ARTICLE 10.

DISCHARGE.

SECTION 200. Instrument; how discharged.
201. When persons secondarily liable on, discharged.
202. Right of party who discharges instrument.
203. Renunciation by holder.
204. Cancellation; unintentional; burden of proof.
205. Alteration of instrument; effect of.
206. What constitutes a material alteration.

§ 200. Instrument; how discharged.

A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor;

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

3. By the intentional cancellation thereof by the holder;

4. By any other act which will discharge a simple contract for the payment of money;

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

§ 201. When persons secondarily liable on, discharged.

A person secondarily liable on the instrument is discharged:

1. By any act which discharges the instrument;

2. By the intentional cancellation of his signature by the holder;

3. By the discharge of a prior party;

4. By a valid tender of payment made by a prior party;

5. By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

6. By any agreement binding upon the holder to extend the time of payment or to postpone the holder's right to enforce the instrument, unless the right of recourse against such party is expressly reserved.

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§ 202. Right of party who discharges instrument.

Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated.

§ 203. Renunciation by holder.

The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument, discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

§ 204. Cancellation; unintentional; burden of proof.

A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

§ 205. Alteration of instrument; effect of.

Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

§ 206. What constitutes a material alteration.

Any alteration which changes:

1. The date;

2. The sum payable, either for principal or interest;

3. The time or place of payment;

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4. The number or the relations of the parties;

5. The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

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ARTICLE 11.

BILL OF EXCHANGE; FORM AND INTERPRETATION.

SECTION 210. Bill of exchange defined.
211. Bill not an assignment of funds in hands of drawee.
212. Bill addressed to more than one drawee.
213. Inland and foreign bills of exchange.
214. When bill may be treated as promissory note.
215. Referee in case of need.

§ 210. Bill of exchange defined.

A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, required the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

§ 211. Bill not an assignment of funds in hands of drawee.

A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same.

§ 212. Bill addressed to more than one drawee.

A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

§ 213. Inland and foreign bills of exchange.

An inland bill of exchange is a bill which is, or on its face purports to be, both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

§ 214. When bill may be treated as promissory note.

Where in a bill the drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

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§ 215. Referee in case of need.

The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need, that is to say, in case the bill is dishonored by non-acceptance or non-payment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

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ARTICLE 12.

ACCEPTANCE.

SECTION 220. Acceptance; how made.
221. Holder entitled to acceptance on face of bill.
222. Acceptance by separate instrument.
223. Promise to accept; when equivalent to acceptance.
224. Time allowed drawee to accept.
225. Liability of drawee retaining or destroying bill.
226. Acceptance of incomplete bill.
227. Kinds of acceptances.
228. What constitutes a general acceptance.
229. Qualified acceptance.
230. Rights of parties as to qualified acceptance.

§ 220. Acceptance; how made.

The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

§ 221. Holder entitled to acceptance on face of bill.

The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and if such request is refused, may treat the bill as dishonored.

§ 222. Acceptance by separate instrument.

Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

§ 223. Promise to accept; when equivalent to acceptance.

An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

§ 224. Time allowed drawee to accept.

The drawee is allowed twenty-four hours after presentment in

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which to decide whether or not he will accept the bill; but the acceptance if given dates as of the day of presentation.

§ 225. Liability of drawee retaining or destroying bill.

Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or non-accepted to the holder, he will be deemed to have accepted the same.

§ 226. Acceptance of incomplete bill.

A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by non-payment. But when a bill payable after sight is dishonored by non-acceptance and the drawee subsequently accepts it, the holder, in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

§ 227. Kinds of acceptances.

An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

§ 228. What constitutes a general acceptance.

An acceptance to pay at a particular place is a general acceptance unless it expressly states that the bill is to be paid there only and not elsewhere.

§ 229. Qualified acceptance.

An acceptance is qualified, which is:

1. Conditional, that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

2. Partial, that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

3. Local, that is to say, an acceptance to pay only at a particular place;

4. Qualified as to time;

5. The acceptance of some one or more of the drawees, but not of all.

§ 230. Right of parties as to qualified acceptance.

The holder may refuse to take a qualified acceptance, and if he

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does not obtain an unqualified acceptance, he may treat the bill as dishonored by non-acceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto.

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ARTICLE 13.

PRESENTMENT FOR ACCEPTANCE.

SECTION 240. When presentment for acceptance must be made.
241. When failure to present releases drawer and indorser.
242. Presentment; how made.
243. On what days presentment may be made.
244. Presentment where time is insufficient.
245. When presentment is excused.
246. When dishonored by non-acceptance.
247. Duty of holder where bill not accepted.
248. Rights of holder where bill not accepted.

§ 240. When presentment for acceptance must be made.

Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

2. Where the bill expressly stipulates that it shall be presented for acceptance; or

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

§ 241. When failure to present releases drawer and indorser.

Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

§ 242. Presentment; how made.

Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day, and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has

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authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

2. Where the drawee is dead, presentment may be made to his personal representative;

3. Where the drawee has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

§ 243. On what days presentment may be made.

A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections one hundred and thirty-two and one hundred and forty-five of this chapter. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon on that day.

§ 244. Presentment where time is insufficient.

Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

§ 245. When presentment is excused.

Presentment for acceptance is excused and a bill may be treated as dishonored by non-acceptance in either of the following cases:

1. Where the drawee is dead, or has absconded, or is a fictitious person or a person not having capacity to contract by bill;

2. Where, after the exercise of reasonable diligence, presentment cannot be made;

3. Where, although presentment has been irregular, acceptance has been refused on some other ground.

§ 246. When dishonored by non-acceptance.

A bill is dishonored by non-acceptance:

1. When it is duly presented for acceptance, and such an acceptance as is prescribed by this chapter is refused or cannot be obtained; or

2. When presentment for acceptance is excused and the bill is not accepted.

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§ 247. Duty of holder where bill not accepted.

Where a bill is duly presented for acceptance and is not accepted within the prescribed time, the person presenting it must treat the bill as dishonored by non-acceptance or he loses the right of recourse against the drawer and indorsers.

§ 248. Rights of holder where bill not accepted.

When a bill is dishonored by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

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ARTICLE 14.

PROTEST.

SECTION 260. In what cases protest necessary.
261. Protest; how made.
262. Protest; by whom made.
263. Protest; when to be made.
264. Protest; where made.
265. Protest both for non-acceptance and non-payment.
266. Protest before maturity where acceptor insolvent.
267. When protest dispensed with.
268. Protest where bill is lost or destroyed or wrongly detained.

§ 260. In what cases protest necessary.

Where a foreign bill appearing on its face to be such is dishonored by non-acceptance, it must be duly protested for non-acceptance, and where such a bill which has not previously been dishonored by non-acceptance is dishonored by non-payment, it must be duly protested for non-payment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

§ 261. Protest; how made.

The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify:

1. The time and place of presentment;
2. The fact that presentment was made and the manner thereof;
3. The cause or reason for protesting the bill;
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

§ 262. Protest; by whom made.

Protest may be made by:

1. A notary public; or
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

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§ 263. Protest; when to be made.

When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

§ 264. Protest; where made.

A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been dishonored by non-acceptance, it must be protested for non-payment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

§ 265. Protest both for non-acceptance and non-payment.

A bill which has been protested for non-acceptance may be subsequently protested for non-payment.

§ 266. Protest before maturity where acceptor insolvent.

Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

§ 267. When protest dispensed with.

Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

§ 268. Protest where bill is lost or destroyed or wrongly detained.

Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

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ARTICLE 15.

ACCEPTANCE FOR HONOR.

SECTION 280. When bill may be accepted for honor.
281. Acceptance for honor; how made.
282. When deemed to be an acceptance for honor of the drawer.
283. Liability of acceptor for honor.
284. Agreement of acceptor for honor.
285. Maturity of bill payable after sight; accepted for honor.
286. Protest of bill accepted for honor or containing a reference in case of need.
287. Presentment for payment to acceptor for honor; how made.
288. When delay in making presentment is excused.
289. Dishonor of bill by acceptor for honor.

§ 280. When bill may be accepted for honor.

Where a bill of exchange has been protested for dishonor by non-acceptance or protested for better security and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

§ 281. Acceptance for honor; how made.

An acceptance for honor supra protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

§ 282. When deemed to be an acceptance for honor of the drawer.

Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

§ 283. Liability of acceptor for honor.

The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

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§ 284. Agreement of acceptor for honor.

The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for non-payment and notice of dishonor given to him.

§ 285. Maturity of bill payable after sight; accepted for honor.

Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for non-acceptance and not from the date of the acceptance for honor.

§ 286. Protest of bill accepted for honor or containing a reference in case of need.

Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for non-payment before it is presented for payment to the acceptor for honor or referee in case of need.

§ 287. Presentment for payment to acceptor for honor; how made.

Presentment for payment to the acceptor for honor must be made as follows:

1. If it is to be presented in the place where the protest for non-payment was made, it must be presented not later than the day following its maturity;

2. If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section one hundred and seventy-five.

§ 288. When delay in making presentment is excused.

The provisions of section one hundred and forty-one apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

§ 289. Dishonor of bill by acceptor for honor.

When the bill is dishonored by the acceptor for honor it must be protested for non-payment by him.

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ARTICLE 16.

PAYMENT FOR HONOR.

SECTION 300. Who may make payment for honor.
301. Payment for honor; how made.
302. Declaration before payment for honor.
303. Preference of parties offering to pay for honor.
304. Effect on subsequent parties where bill is paid for honor.
305. Where holder refuses to receive payment supra protest.
306. Rights of payer for honor.

§ 300. Who may make payment for honor.

Where a bill has been protested for non-payment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

§ 301. Payment for honor; how made.

The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

§ 302. Declaration before payment for honor.

The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

§ 303. Preference of parties offering to pay for honor.

Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

§ 304. Effect on subsequent parties where bill is paid for honor.

Where a bill has been paid for honor all parties subsequent to the party for whose honor, it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

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§ 305. Where holder refuses to receive payment supra protest.

Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

§ 306. Rights of payer for honor.

The payer for honor on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

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ARTICLE 17.

BILLS IN SETS.

SECTION 310. Bill in sets constitutes one bill.
311. Rights of holders where different parts are negotiated.
312. Liability of holder who indorses two or more parts of a set to different persons.
313. Acceptance of bills drawn in sets.
314. Payment by acceptor of bills drawn in sets.
315. Effect of discharging one of a set.

§ 310. Bill in sets constitutes one bill.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

§ 311. Rights of holders where different parts are negotiated.

Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

§ 312. Liability of holder who indorses two or more parts of a set to different persons.

Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

§ 313. Acceptance of bills drawn in sets.

The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

§ 314. Payment by acceptor of bills drawn in sets.

When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

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§ 315. Effect of discharging one of a set.

Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

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ARTICLE 18.

PROMISSORY NOTES AND CHECKS.

SECTION 320. Promissory note defined.
321. Check defined.
322. Within what time a check must be presented.
323. Certification of check ; effect of.
324. Effect where holder of check procures it to be certified.
325. When check operates as an assignment.
326. Recovery of forged check.

§ 320. Promissory note defined.

A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him.

§ 321. Check defined.

A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check.

§ 322. Within what time a check must be presented.

A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

§ 323. Certification of check; effect of.

Where a check is certified by the bank on which it is drawn the certification is equivalent to an acceptance.

§ 324. Effect where holder of check procures it to be certified.

Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon.

§ 325. When check operates as an assignment.

A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank

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is not liable to the holder, unless and until it accepts or certifies the check.

§ 326. Recovery of forged check.

No bank shall be liable to a depositor for the payment by it of a forged or raised check, unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid was forged or raised.

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ARTICLE 19.

NOTES GIVEN FOR PATENT RIGHTS AND FOR A SPECULATIVE CONSIDERATION.

SECTION 330. Negotiable instruments given for patent rights.
331. Negotiable instruments given for a speculative consideration.
332. How negotiable bonds are made non-negotiable.

§ 330. Negotiable instruments given for patent rights.

A promissory note or other negotiable instrument, the consideration of which consists wholly or partly of the right to make, use or sell any invention claimed or represented by the vendor at the time of sale to be patented, must contain the words "given for a patent right" prominently and legibly written or printed on the face of such note or instrument above the signature thereto; and such note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder; but this section does not apply to a negotiable instrument given solely for the purchase price or the use of a patented article.

§ 331. Negotiable instruments given for a speculative consideration.

If the consideration of a promissory note or other negotiable instrument consists in whole or in part of the purchase price of any farm product, at a price greater by at least four times than the fair market value of the same product at the time in the locality, or of the membership and rights in an association, company or combination to produce or sell any farm product at a fictitious rate, or of a contract or bond to purchase or sell any farm product at a price greater by four times than the market value of the same product at the time in the locality, the words, "given for a speculative consideration," or other words clearly showing the nature of the consideration must be prominently and legibly written or printed on the face of such note or instrument above the signature thereof; and such note or instrument, in the hands of any purchaser or holder, is subject to the same defenses as in the hands of the original owner or holder.

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§ 332. How negotiable bonds are made non-negotiable.

The owner or holder of any corporate or municipal bond or obligation (except such as are designated to circulate as money, payable to bearer), heretofore or hereafter issued in and payable in this state, but not registered in pursuance of any state law, may make such bond or obligation, or the interest coupon accompanying the same, non-negotiable, by subscribing his name to a statement indorsed thereon, that such bond, obligation or coupon is his property; and thereon the principal sum therein mentioned is payable only to such owner or holder, or his legal representatives or assigns, unless such bond, obligation or coupon be transferred by indorsement in blank, or payable to bearer, or to order, with the addition of the assignor's place of residence.

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ARTICLE 20.

LAWS REPEALED; WHEN TO TAKE EFFECT.

SECTION 340. Laws repealed.
341. When to take effect.

§ 340. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 341. When to take effect.

This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes....	Part 2, chapter 4, title 2, ...	All
Laws of	Chapter	Section
1788.....	33.....	All
1794.....	48.....	All
1801.....	44.....	All
1819.....	34.....	All
1823.....	216.....	All
1826.....	17.....	All
1828.....	20.....	15, ¶ 30 (2d meet.)
1828.....	20.....	1, ¶¶ 51, 272, 393, 460 (2d meet.)
1835.....	141.....	All
1857.....	416.....	All
1865.....	309.....	All
1870.....	438.....	All
1871.....	84.....	All
1873.....	595.....	All
1877.....	65.....	All
1887.....	461.....	All
1888.....	229.....	All
1891.....	262.....	All
1894.....	607.....	All

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Laws of	Chapter	Section
1897.....	612.....	All
1897.....	613.....	2, 3
1898.....	336.....	All
1904.....	287.....	All

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INDEX TO NEGOTIABLE INSTRUMENTS LAW.

(REFERENCE IS MADE TO SECTIONS.)

SECTION

ACCEPTANCE:
- by separate instrument 222
- definition of term 2
- drawee retaining or destroying bill 225
- for honor, or supra protest 280
  - agreement of acceptor 284
  - bill payable after sight, maturity of 285
  - dishonor 289
  - how made 281
  - liability of acceptor 283
  - presentment for payment 287
    - delay in making 288
  - protest 286
  - when deemed to be 282
- how made 220
  - by whom signed 220
  - in writing 220
- kinds of 227
  - general 228
  - qualified 229
  - rights of parties 230
- of bills drawn in sets 313
- of incomplete bill 226
- on face of bill, holder entitled to 221
- promise to accept 223
- time to accept 224

ACCEPTOR: *See Acceptance.*
- liability of 112
  - of accommodation acceptor 55

ACCOMMODATION:
- liability of accommodation party 55

Digitized by Google

	SECTION
ACTION:	
definition of term	2
AGENT:	
authority, how shown	38
liability of, on signature	39
notice of dishonor by	162
procuration, signature by	40
AMBIGUITY:	
rules of construction	36
APPLICATION:	
of this chapter, not retroactive	6
BANK: *See Savings Bank.*	
definition of term	2
BEARER:	
definition of term	2
when instrument payable to	28
BILL OF EXCHANGE:	
addressed to several drawees	212
definition of term	210
referee in case of need	215
inland and foreign	213
not an assignment	211
of exchange, defined	210
when a note	214
BILL IN SETS:	
acceptance of	313
constitutes one bill	310
different parts negotiated	311
liability of holders	312
rights of holders	311
discharging one destroys whole	314
payment by acceptor	315
BLANK:	
indorsement in, effect of	28
when may be filled in	33
BOND:	
negotiable made non-negotiable	333
CASHIER:	
instrument drawn or indorsed to	72
CERTAINTY:	
as to drawee	20
as to payee	27
CHECK:	
certification, effect of	323
defined	321
time for presentment	322
when an assignment	325
forged, recovery of	326

Digitized by Google

CONSIDERATION: SECTION
holder for value ... 52
through lien on instrument ... 53
liability of accommodation indorser ... 55
presumption of ... 50
want of ... 54
what constitutes ... 51
when to be stated in instrument ... 25

CONSTRUCTION:
of instrument, rules for ... 36

CONTINGENCY:
instrument payable on, not negotiable ... 23

CORPORATION:
indorsement by ... 41

DATE:
ante-dating and post-dating ... 31
omission of, in instrument ... 25
presumption as to ... 30
when it may be inserted ... 32

DAY: *See Holiday.*

DEBT:
pre-existing, constitutes value ... 51

DEFINITIONS:
of terms used in act ... 2

DELIVERY:
conditional ... 35
definition of term ... 2
of incomplete instrument ... 34
of notice of dishonor ... 167
warranty where negotiation by ... 115
when effectual ... 35
when presumed ... 35

DEMAND: *See Presentment for Acceptance; Presentment for Payment.*
want of, effect of ... 130
when instrument payable on ... 26
when presentment to be made ... 131

DISCHARGE OF INSTRUMENT:
bill in sets ... 315
by alteration ... 205
material, what constitutes ... 206
by act discharging contract ... 200
by cancellation ... 200
burden of proof ... 204
unintentional, effect of ... 204
by payment ... 200
debtor becoming holder ... 200
persons secondarily liable, when discharged ... 201
renunciation by holder ... 203
right of party discharging ... 202
re-negotiation ... 202

Digitized by Google

SECTION

DISHONOR: *See Notice of Dishonor; Presentment for Acceptance; Presentment for Payment.*

DRAWEE: *See Acceptance.*
- instrument may be payable to order of 27
- may be several 212

DRAWER:
- instrument may be payable to order of 27
- liability of 111
  - of accommodation drawer 55
- notice of dishonor to 160
- relieved from liability by certification of check 324
- when presentment not required, to charge 139, 140, 240

FICTITIOUS PERSON:
- instrument payable to 28

FORGED CHECK:
- recovery of 326

HOLDER:
- definition of term 2
- duty of, where bill not accepted 247
- for value, what constitutes 52
  - lien on instrument 53
- in due course, what constitutes 91
  - notice before full amount paid 93
  - rights of 96
  - when person not deemed 92
  - who deemed 98
- instrument subject to original defenses 97
- notice of dishonor in behalf of 163
- of office, instrument may be payable to order of 27
- rights of 90
  - after dishonor 144
  - of bill in sets 311
  - resort to referee in case of need 215
  - to acceptance on face of bill 221
  - to sue 90
  - where bill not accepted 248
- title of, when defective 94
  - what constitutes notice 95

HOLIDAY:
- instrument due on 5

INDORSEE: *See Indorsement.*

INDORSEMENT:
- by corporation 41
- by infant 41
- conditional 69
- definition of term 2
- how made 61
- in blank 28, 64
- indorsement to cashier 72
- in representative capacity 74

Digitized by Google

INDORSEMENT.—(Continued). SECTION
instrument payable to bearer 70
instrument payable to two or more persons 71
must be of entire instrument 62
place of, presumption 76
qualified 68
restrictive 66
effect of 67
rights of endorsee 67
special 64
blank, how changed to special 65
striking out 78
time of, presumption 75
transfer without, effect of 79
where name is wrongly designated or misspelled 73

INDORSER:
accommodation, liability of 55
general, liability of 116
irregular, liability of 114
liability after check certified 324
notice of dishonor to 160
order of liability 118
paper negotiable by delivery 117
presentment not required to charge 140
warranty in negotiation by qualified indorsement 115
when person deemed 113

INFANT:
indorsement by 41

INSTRUMENT:
acceptance of 220
acceptance supra protest 280
bill in sets 310
blank in, when may be filled 33
checks 321
construction, rules of 36
continuation of negotiable character 77
date, omission of 25
ante-dating and post-dating 31
insertion of 32
presumption as to 30
definition of term 12
delivery of 35
when effectual 35
when presumed 35
discharge of 200
dishonored by non-payment, when 143
liability of person secondarily liable 144
forged signature, effect of 42
given for patent rights 330
given for speculative consideration 331
holders, rights of 90

Digitized by Google

INSTRUMENT.—(Continued). SECTION
incomplete, not delivered 34
indorsement by infant or corporation 41
liability of parties 110–119
may be payable in particular kind of money 25
means "negotiable instrument" in this act 2
notice of dishonor 160–189
omissions in, effect of 25
payee to be indicated with reasonable certainty 27
payment supra protest 300
presentment for acceptance 240
presentment for payment 130–148
primary and secondary liability on 3
promise to pay to be unconditional 22
not out of a particular fund 22
promissory note defined 320
protest of 260
provisions in, not affecting negotiability 24
confession of judgment 24
election of holder as to payment 24
sale of collateral securities 24
waiver of legal benefit 24
re-negotiation of 80, 202
requirements of negotiability 20
must be in writing 20
must be payable on demand or at fixed time 20
must be payable to order or bearer 20
must be signed by maker or drawer 20
must contain promise or order to pay 20
must definitely indicate drawee 20
rule where payable at bank 147
seal upon, effect of 25
signing as agent 38
signing under assumed name 37
subject to original defenses 97
terms of, what are sufficient 29
time of payment to be determinable 23
not dependent on contingency 23
to whose order may be payable 27
warranty where negotiation by delivery 115
when payable on demand 26
when payable to bearer 28
indorsement in blank 28
payable to fictitious person 28
when payable to order 27

ISSUE:
definition of term 2

LAW MERCHANT:
rules of, to govern 7

LAWS REPEALED:
schedule of 340

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	SECTION
LIABILITY:	
of acceptor	112
of agent or broker	119
of drawee retaining bill	225
of drawer	111
of holders of bill in sets	312
of accommodation party	55
of indorser:—	
for accommodation	55
general	116
irregular	114
order of liability	118
when person deemed indorser	113
where paper negotiable by delivery	117
of maker	110
of persons secondarily liable	144
after dishonor	144
primary and secondary	3
test of, is signature	37
signing as agent	38
signing under assumed name	37
warranty in negotiation by delivery	115
by a qualified indorsement	115
LIEN:	
on instrument constituting holder for value	53
MAKER:	
instrument may be payable to order of	27
liability of	110
of accommodation maker	55
MATURITY:	
time of	145
MERGER: *See Discharge of Instrument.*	
MONEY:	
instrument payable in particular kind	35
NEGOTIABILITY:	
dependent upon unconditional promise to pay	22
not, out of particular fund	22
effect of omissions upon	25
instrument to be payable at fixed time	23
upon contingency, not negotiable	23
in a sum certain in money	20
provisions not affecting	24
confession of judgment	24
election of holder as to payment	24
sale of collateral securities	24
waiver of legal benefit	24
requirements generally	20
must be in writing	20
must be payable on demand or at a fixed time	20
must be payable to order or bearer	20
must be signed by maker or drawer	20

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NEGOTIABILITY.—(Continued). SECTION
requirements generally (continued).
must contain order or promise to pay 20
must definitely indicate drawee 20
NEGOTIATION:
by delivery, warranty in 115
by indorsement 60
conditional 69
how made 61
in blank 28, 64
in representative capacity 74
of part of instrument 62
place of 76
qualified 68
restrictive 66, 67
special 64
striking out 78
time of 75
to "cashier" 72
when payable to bearer 70
when payable to two or more persons 71
continuation of negotiable character 77
instrument drawn to "cashier" 72
re-negotiation 202
transfer without indorsement 79
what constitutes 60
where instrument is negotiated back 80
where name is wrongly designated or misspelled 73
NOTE:
definition of term 2, 320
when bill may be treated as 214
NOTICE OF DISHONOR:
bankrupt, how given to 172
by party entitled to give, effect of 164
by whom given 161
by agent 162
delay in giving, how excused 184
dispensed with 183
to drawer, in what cases 185
to indorser, in what cases 186
when cannot be given 184
where acceptance refused 187
form of 167
how delivered 167
joint parties, how given to 171
may be given to whom 168
must be given to whom 160
omission to give, effect of 188
on behalf of holder, effect of 163
partners, how given to 170
sufficient when 166

Digitized by Google

NOTICE OF DISHONOR.—(Continued). SECTION
through post-office 176
deposit, what constitutes 177
when sufficient 177
time to give 173
parties residing in different places 175
parties residing in same place 174
to antecedent party 178
waiver. 180
of protest 182
whom affected by 181
where party is dead 169
where to be sent 179

OMISSIONS:
in instrument, effect of 25
rules of construction 36

ORDER:
to whose order may be payable 27
when instrument is payable to 27

PARTNERS:
notice of dishonor to 170
presentment to 137

PATENT RIGHTS:
negotiable instrument given for 338

PAROL EVIDENCE: *See Evidence.*

PAYEE:
who may be 25
there may be several 25
to be named with reasonable certainty 25

PAYMENT: *See Discharge of Instrument; Presentment for Payment.*
in due course what constitutes 148

PAYMENT SUPRA PROTEST:
declaration before 302
effect on subsequent parties 304
holder refusing to receive 305
how made 301
preference of offering parties 303
rights of payer 306
who may make 300

PERSON:
definition of term 2

PLACE:
omission of from instrument 25

PRESENTMENT FOR ACCEPTANCE:
dishonor by non-acceptance 246
duty of holder 247
rights of holder 215, 248
failure of, effect of 241
how made 242
when not necessary to make parties liable 240

Digitized by Google

PRESENTMENT FOR ACCEPTANCE.—(Continued). SECTION
when excused 245
where time is insufficient 244
when to be made 240
on what days 243

PRESENTMENT FOR PAYMENT:
delay in, excused 141
bills accepted supra protest 286
dishonor after presentment 143
person secondarily liable 144
resort to referee in case of need 215
dispensed with, when 142
exhibiting instrument 134
joint debtors, presentment to 138
not required, when 139, 140
to charge drawer 139
to charge indorser 140
of bills accepted supra protest 288
of checks 322
partners, presentment to 137
place of 133
principal debtor being dead 136
sufficient, what constitutes 132
what of demand, effect of 130
on indorser 130
on principal debtor 130
when to be made 131
instrument payable at bank 135
instrument payable on demand 131
maturity of instrument 145
time, how computed 146

PRESUMPTION:
as to consideration 50
as to date 30
as to delivery 35
as to place of indorsement 76
as to signature 50
as to time of indorsement 75

PROCURATION:
signature by 40

PROMISE:
to pay, when unconditional 22

PROMISSORY NOTE: *See Note.*

PROTEST:
before maturity, when acceptor insolvent 266
by whom made 262
dispensed with 267
for non-acceptance and non-payment 265
how made 201
of bill accepted supra protest 286
containing a reference in case of need 286

Digitized by Google

PROTEST.—(Continued). SECTION
waiver of 182
when necessary 189, 260
when to be made 263
where bill is lost, destroyed or wrongly detained 268
where made 264

REFEREE:
in case of need, inserted in bill of exchange 215
protest of bill containing a reference in case of need 286

SEAL:
effect of, upon instrument 25

SIGNATURE:
by agent 38
by procuration 40
forged 42, 326
presumption as to 50
under trade or assumed name 37

SPECULATIVE CONSIDERATION:
negotiable instrument given for 331

SUM:
how may be made payable 21
by installments 21
with costs of collection 21
with exchange 21
with fees of attorney 21
with interest 21

SUNDAY: *See Holiday.*

TERMS:
of instrument, when sufficient 29

TIME:
allowed drawee to accept 224
determinable future, what constitutes 23
for presentment for acceptance 240
how computed 5, 146
of maturity 145
of checks 322
reasonable, what constitutes 4
to give notice of dishonor 173

TITLE:
defective, of person negotiating instrument 94
notice of defect 95
short, of this chapter 1

UNCONDITIONAL PROMISE: *See Promise.*

VALUE:
pre-existing debt is value 51
definition of term 2
holder for, what constitutes 52
lien on instrument 53
omission of, from instrument 25

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WAIVER: SECTION
of notice of dishonor 180
of protest 182
WARRANTY:
in negotiation by delivery 115
by qualified indorsement 115
WRITING:
includes print 2

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PERSONAL PROPERTY LAW.

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CONSOLIDATORS' NOTES TO TEXT OF PERSONAL PROPERTY LAW.

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1. Sec. 11. In the technical language of the common law, which by constitutional limitation is expressly binding on the Judiciary, in the absence of Legislative changes, a "will" refers to real property; a "testament" refers to personal property. This section refers to a testament and the usual technical language should be employed.

2. Sec. 11. The rule against perpetuities expressed in this section has been lately held, since L. 1903, Ch. 701, to have no further application to charitable uses:

Allen v. *Stevens*, 161 N. Y. 122;
Matter of Griffen, 167 id. 71, 81.

This being so, it should be plainly stated in a statute consolidating the laws relating to charities. At common law, charitable or public uses were not subject to the rule against perpetuities, except as to the time of vesting in possession, which could not be postponed beyond the legal limit.

Marsden on Perpetuities, 24, 295;
Challis on Real Property, 157.

This was a wise exception, recognized in this state, and should be continued.

Rose v. *Rose*, 4 Abb. Ct. App. Dec. 108.

The phrase "except as to the time of vesting in possession" is the technical one employed in the law relating to charitable uses to express that such uses must vest within the time limit prescribed by the rule against perpetuities.

The following should be added to section 11.

"But this section does not apply to the charitable or other uses mentioned in sections twelve, thirteen and fourteen of this article, except as to the time of vesting in possession."

3. Sec. 12. This is a consolidation of L. 1893, Ch. 701, Secs. 1, 2, as amended by L. 1901, Ch. 291, Sec. 1. No change is made in the language of the statutes, further than to limit their application to personal property. The same laws, in so far as applicable to real property, are transferred to section 113, Real Property Law.

4. Sec. 13. This section is intended to consolidate L. 1840, Ch. 318, Secs. 1-4, as amended by L. 1841, Ch. 261, Sec. 1, in so far as those laws relate to personal property. The same acts in so far as they relate to real property are made section 114 of the Real Property Law.

5. Sec. 13. The compulsory record of deeds of gift of personalty to

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charitable uses is in the interest of both the public and the individual citizen. The attorney-general, by L. 1893, Ch. 701, as amended by L. 1901 Ch. 291, is charged with enforcing most charitable uses. Publicity is requisite to enable him to fully perform his duty. The Legislature should also be enabled to ascertain the amounts donated to charitable uses.

A new subdivision should be added to section 13, to be known as subdivision 5, as follows:

"V. Every settlement, gift, grant or conveyance of personal property made under this section, or purporting so to be made, shall be in writing and, if not a last will and testament, shall be acknowledged or proved, in the manner required to entitle grants or conveyances of real property to be recorded.

"Every such deed of settlement, gift, grant or conveyance, in order to entitle it to the benefits of this section, shall be recorded in the county where the donor resides, or if a non-resident in the county or counties where the uses are to be performed and executed, and shall be indexed under the names of the donor or grantor and the donee and grantee in a book to be kept for that purpose by each recording officer.

6. Sec. 14. This section consolidates L. 1892, Ch. 516, Secs. 1-7 as amended by L. 1905, Ch. 393, Sec. 1, without change, except to limit its application to personal property. The corresponding provisions, in so far as they relate to real property, are carried into the Real Property Law Sec. 115.

7. Sec. 14. A new subdivision should be added to Sec. 14, to be known as subdivision 8, as follows:

"VIII. Every settlement, gift, grant or conveyance of personal property made under this section, or purporting so to be made, shall, in order to entitle it to the benefits of this section, be recorded in the county where the donor or grantor resides, or, if a non-resident, in the county or counties where the uses are to be executed and performed, and shall be indexed under the names of the donor or grantor and the donee and grantee in a book to be kept for that purpose by each recording officer."

8. Sec. 16. L. 1846, Ch. 74, Sec. 1, and L. 1855, Ch. 432, Sec. 1, consolidated, without change, except to limit their application to personal property. The corresponding provisions relating to real property are carried into section 61 of the Real Property Law.

9. Sec. 19. It is suggested that the words "by such deceased debtor" should be inserted after the words "or agreement made in fraud of creditors" in section 19. This is restoring the language, L. 1894, Ch. 740, from which this section was taken. The Statutory Revision Commission, in presenting the Personal Property Law, stated that Section 7 was "unchanged in substance, so far as relates to personal property." This is the interpretation placed upon this section by the Appellate Division of the First Department. See Magoun v. Quigley, 115 App. Div. 226.

10. Art. 3. The "not" proposed to be omitted is misleading. The article treats of agreements in writing, not of agreements not in writing.

11. Art. 4. This article, relating to conditional sales of goods and chattels is taken from "old" Lien Law, Art. 9. Personal Property Law seems to be its appropriate classification.

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TABLE.

A.

Showing distribution of sections of former Personal Property Law as now found in Consolidated Personal Property Law, Domestic Relations Law and Decedent State Law.

Former Section Number.	Consol. Personal Prop. Law Section.
1 pt.	1
1 pt.	10
2	11
3	15 pt
4	16 pt.
5	17
6	18
7	19
8	20
9 pt.	21
9 pt. (Domestic Relations L. Sec. 85)	
9 pt. (Decedent Estate L. Sec. 111.)	
20	30
21	31
22	33
23	34
24	35
25	36
26	37
27	38
28	39
29	40
40	80
41	81

B.

Showing the provisions of the Session Laws, Lien Law and Code of Civil Procedure which have been consolidated in the Personal Property Law.

	Consol. Personal Prop. Law Section.
L. 1830, Ch. 179, Secs. 3–6	43
" 1840 " 318 " 1–4	13
" 1846 " 74 Sec. 1	16 pt.
" 1855 " 432 " 1	16 pt.
" 1892 " 516 Secs. 1–7	14
" 1893 " 701 Sec. 1	12 pt.

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					Consol. Personal Prop. Law Section.
L. 1893	"	701	"	2	12 pt.
" 1896	"	249	"	1	22
" 1897	"	418	Secs.	110-118....(See Lien Law)	
" 1903	"	87	Sec.	2	15 pt.
" 1904	"	77	Secs.	1-2	42
" 1904	"	692	Sec.	1	32
" 1907	"	722	Secs.	1-3	44

Lien Law, Sec.				110	60
"	"	"		111	61
"	"	"		112	62
"	"	"		113	63
"	"	"		114	64
"	"	"		116	65
"	"	"		117	66
"	"	"		118	67

Code Civil Procedure, Secs.				1909	41 pt.
"	"	"	"	1910	41 pt.
"	"	"	"	1912	41 pt.

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PERSONAL PROPERTY LAW.

(L. 1909, CHAP. 45, BEING CHAP. 41 OF THE CONSOLIDATED LAWS IN EFFECT FEB. 17, 1909.)

ARTICLE 1. Short title (§ 1).
2. Future estates; charitable uses; accumulation of income; trust estates (§§ 10–24).
3. Agreements in writing; without consideration; fraudulent; factors (§§ 30–45).
4. Contracts for the conditional sale of goods and chattels (§§ 60–67).
5. Sales of goods (§§ 82–158).
6. Laws repealed; when to take effect (§§ 165, 166).
6.* Transfers of shares of stock in corporations (§§ 162–185).
7. Bills of lading (§§ 187–241).

ARTICLE 1.

SHORT TITLE.

SECTION 1. Short title.

§ 1. Short title.

This chapter shall be known as the "Personal Property Law."

Derivation: Personal Property Law, § 1 pt.

ARTICLE 2.

FUTURE ESTATES; CHARITABLE USES; ACCUMULATION OF INCOME; TRUST ESTATES.

SECTION 10. Definitions.
11. Suspension of ownership.
12. Gifts and bequests of personal property for charitable purposes.
13. Certain educational and other charitable uses authorized.
13a. Trusts for care of cemetery lots, etc.
14. Certain gifts for charitable, educational and other uses regulated.
15. Personal property not alienable in certain cases.
16. Validity of directions for accumulation of income.
17. Anticipation of directed accumulation.
18. Power to bequeath executed by general provision in will.
19. Disaffirmance of fraudulent acts by executors and others.
20. When trust vests in supreme court.
21. Investment of trust funds.
22. Commissions of trustees.
23. Revocation of trusts upon consent of all persons interested.
24. Compromise of controversies arising between claimants to property or estates where the interest of infants, incompetents or persons unknown or not in being are or may be affected

§ 10. Definitions.

The term "income of personal property," as used in this article,

*So in original. See L. 1913, ch. 600.

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means the income or profits arising from personal property, and includes the interest of money and the produce of stock.

Derivation: Personal Property Law, § 1, last sentence.

§ 11. Suspension of ownership.

The absolute ownership of personal property shall not be suspended by any limitation or condition, for a longer period than during the continuance and until the termination of not more than two lives in being at the date of the instrument containing such limitation or condition; or, if such instrument be a last will and testament, for not more than two lives in being at the death of the testator. In other respects limitations of future or contingent interests in personal property, are subject to the rules prescribed in relation to future estates in real property.

Derivation: Personal Property Law, § 2.

§ 12. Gifts and bequests of personal property for charitable purposes.

1. No gift, grant, or bequest to religious, educational, charitable, or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or bequest there is a trustee named to execute the same, the legal title to the property given, granted, or bequeathed for such purposes shall vest in such trustee. If no person be named as trustee then the title to such property shall vest in the supreme court.

2. The supreme court shall have control over gifts, grants and bequests in all cases provided for by subdivision one of this section, and, whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant or bequest to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustee or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant or bequest shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of the instrument, without regard to and free from any specific restriction, limitation or direction contained therein; pro-

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vided, however, that no such order shall be made without the consent of the donor or grantor of the property, if he be living. (Subd. 2 amended by L. 1909, ch. 144, in effect April 3, 1909.)

3. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.

4. Whenever heretofore or hereafter any voluntary association or committee shall have received by public subscription from contributors exceeding one thousand in number a fund for a charitable or benevolent purpose, a portion of which shall remain unexpended after the expiration of five years from its receipts, and it shall appear that a literal compliance with the terms of the subscription is impracticable, the Supreme Court may, on the application of such association, or of the treasurer of the committee having the custody of such unexpended balance, and upon twenty days' personal notice to the attorney-general, and four weeks' notice by publication once a week for four successive weeks in two newspapers of general circulation published in the county in which the treasurer of such association or of such committee shall reside, or, if such treasurer shall reside out of the state in the county in which at least ten per centum of the contributors to such fund shall have resided at the time of its receipt, otherwise in such manner as the court shall prescribe, to the contributors as a class, to ten specified members of such class, and to the trustees of such association, or to the surviving members of such committee, make an order directing that such balance be transferred for administration to such domestic corporation as in the judgment of the court will most effectually accomplish the general purpose for which said fund shall have been collected, without regard to and free from any express or implied limitation, restriction or direction upon which the subscription shall have been made; and on the transfer of said fund to the corporation designated in such order, said voluntary association and its officers and trustees, or said committee and its treasurer and other officers, shall be fully exonerated and discharged from all liability to account therefor. (Subd. 4 added by L. 1911, ch. 220, in effect June 1, 1911.)

Derivation: L. 1893, ch. 701, § 1; L. 1893, ch. 701, § 2, as amended by L. 1901, ch. 291, § 1. Amended by L. 1909, ch. 144. In effect April 3, 1909.

§ 13. Certain educational and other charitable uses authorized.

1. Personal property may be granted, bequeathed, and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for any one or more of the following purposes:

(1) To establish and maintain an observatory;

(2) To found and maintain professorships and scholarships;

(3) To provide and keep in repair a place for the burial of the dead; or

(4) For any other specific purposes comprehended in the general objects authorized by their respective charters.

The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustees, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for any of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

2. Personal estate may be granted, bequeathed, and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or

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near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation.

3. Personal estate may be granted, or bequeathed to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

4. The trusts authorized by this section may continue for such time as may be necessary to accomplish the purposes for which they may be created.

Derivation: L. 1840, ch. 318, §§ 1-4, as amended by L. 1841, ch. 261, § 1.

§ 13-a. Trusts for care of cemetery lots, etc.

Gifts, grants and bequests of personal property, in trust for the purpose of perpetual care and maintenance, improvement or embellishment of private burial lots in or outside of cemeteries, and the walks, fences, monuments, structures and tombs thereon are permitted and shall be deemed to be for charitable and benevolent uses; and shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument erecting the same, nor shall they be deemed invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing herein contained shall affect any existing authority of the courts to pass upon the reasonableness of the amount of such gift, grant or bequest. Any cemetery association may act as trustee of and execute any such trust with respect to lots, walks, fences, monuments, structures and tombs both within its own cemetery limits and outside of any cemetery under its control, but within the county where such cemetery is located, whether such power be otherwise included in its corporate powers or not. (Added by L. 1909, ch. 218; amended by L. 1911, ch. 430, in effect June 23, 1911.)

§ 14. Certain gifts for charitable, educational and other uses regulated.

1. Any person desiring, in his life-time, to promote the public welfare by founding, endowing and having maintained a public library, museum, or other educational institution, or a chapel and crematory, within this state, or by furnishing equipment or other personal property to be used by, or the income of which is to be applied to the use of any board of trade or chamber of commerce within this state, may to that end and for such purposes by grant, in writing, convey to a trustee, or any number of trustees, named in such grant, and to their successors, any personal property belonging to such person.

2. The person making such grant may therein designate:

(1) The nature, object and purposes of the institution to be founded, endowed and maintained, or of the corporation or corporations, which are to have the use or the income of such personal property.

(2) In case of the founding of an institution, the name by which it shall be known.

(3) The powers and duties of the trustee or trustees and the manner in which he or they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be exclusive of other powers which may be necessary to enable such trustee or trustees to fully carry out the object of such grant.

(4) The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed.

(5) Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed

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advisory only, and shall not preclude such trustee or trustees from making such changes as new conditions may from time to time require.

(6). The place or places where, and the time when, the building or buildings necessary and proper for the institution shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for such lectures, exhibitions, instruction or amusement in connection with such institution as he may deem desirable.

3. The trustee or trustees named in such grant and their successors, may in the name of the institution, as designated in such grant, sue and defend, in relation to the trust property and in relation to all matters affecting the institution endowed and established by such grant.

4. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance and management of such institution, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance and management of such institution, perform all the duties and exercise all the powers, which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, however, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustee or trustees named in the grant and their successors.

5. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters men-

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tioned or referred to in paragraphs numbered one to six inclusive of subdivision two hereof; and may also therein reserve the right, during the life of such person, of absolute dominion over the personal property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same dominion over such personal property, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledging and recording of grants of real property.

7. No suit, action or proceedings shall be commenced or maintained by any person to set aside, annul or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the issues and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustee or trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession or the issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record. (Amended by L. 1920, ch. 168, in effect April 12, 1920.)

Derivation: L. 1892, ch. 516, §§ 1–7, as amended by L. 1905, ch. 393, § 1.

§ 15. Personal property not alienable in certain cases.

1. The right of the beneficiary to enforce the performance of a trust to receive the income of personal property, and to apply it to the use of any person; cannot be transferred by assignment or otherwise. But the right and interest of the beneficiary of any other trust in personal property may be transferred. Provided, however, that when the proceeds of a life insurance policy, becoming a claim by death of the insured, are left with the insurance company under a trust or other agreement, the benefits accruing thereunder after the death of the insured shall not be transferable, nor subject to commutation or incumbrance, nor to legal process except in an action to recover for necessaries, if the parties to the trust or other agreement so agree.

2. The provisions of this section shall not impair or affect any rights existing on March twenty-fifth, nineteen hundred and three, nor impair or affect the rights of creditors under section fifty-two of the domestic relations law. (Amended by L. 1911, ch. 327, in effect June 14, 1911.)

Derivation: Personal Property Law, § 3, as amended by L. 1903, ch. 87, § 1; L. 1903, ch. 87, § 2, incorporated.

§ 16. Validity of directions for accumulation of income.

An accumulation of the income of personal property, directed

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by any instrument sufficient in law to pass such property is valid:

1. If directed to commence from the date of the instrument, or the death of the person executing the same, and to be made for the benefit of one or more minors, then in being, or in being at such death, and to terminate at or before the expiration of their minority.

2. If directed to commence at any period subsequent to the date of the instrument or subsequent to the death of the person executing it, and directed to commence within the time allowed for the suspension of the absolute ownership of personal property, and at some time during the minority of the persons for whose benefit it is intended, and to terminate at or before the expiration of their minority.

3. All other directions for the accumulation of the income of personal property, not authorized by statute, are void. In either case mentioned in subdivisions one and two of this section a direction for any such accumulation for a longer term than the minority of the persons intended to be benefited thereby, has the same effect as if limited to the minority of such persons, and is void as respects the time beyond such minority.

Provided that, the income arising from any personal property granted or conveyed, or bequeathed, in trust to any incorporated college or other incorporated literary institution, for any of the purposes specified in section thirteen of this chapter, or for the purpose of providing for the maintenance of any teacher in a grammar school or institute, may be permitted to accumulate until the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect any of the charitable uses and trusts mentioned in either section thirteen of this chapter or in this paragraph of this section.

Provided, if any of the principal of any trust fund actually received by any incorporated college, or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, or bequest, for any of the purposes for which trusts are authorized under section thirteen of this chapter, shall subsequently become diminished from any cause, such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions, if any, contained in the grant,

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conveyance, or bequest of such trust fund; and if no directions for that purpose are contained in such grant, conveyance, or bequest, then such diminution may be made up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

Provided, further, that where a gift, grant, devise or bequest of real and personal property, or of personal property alone, is made in trust by the owner thereof to a religious, educational, charitable or benevolent corporation, for any of the purposes specified or comprehended in its charter, not more than one-fourth of the total value of such gift, grant, devise or bequest of real and personal property, or of personal property alone, not exceeding in value the sum of fifty thousand dollars, may be set apart for the accumulation of the rents and profits, and income, of such property, for the benefit of such corporation, until such time as such accumulation shall amount to the sum of one hundred thousand dollars, whereupon such accumulation shall be available for the use of such corporation, as a part of the permanent endowment fund thereof, or otherwise as provided in the conditions of the gift, grant, devise or bequest to such corporation. (Amended by L. 1915, ch. 670, in effect May 22, 1915.)

Derivation: Personal Property Law, § 4; L. 1846, ch. 74, § 1; L. 1855, ch. 432, § 1.

§ 17. Anticipation of directed accumulation.

When a minor, for whose benefit a valid accumulation of the income of personal property has been directed, shall be destitute of other sufficient means of support or education, the supreme court, at special term in any case, or, if such accumulation shall have been directed by a will, the surrogate's court of the county in which such will shall have been admitted to probate, may, on the application of such minor or his guardian, cause a suitable sum to be taken from the moneys accumulated or directed to be accumulated, to be applied for the support or education of such minor.

Derivation: Personal Property Law, § 5.

§ 18. Power to bequeath executed by general provision in will.

Personal property embraced in a power to bequeath, passes by a ll or testament purporting to pass all the personal property of

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the testator; unless the intent, that the will or testament shall not operate as an execution of the power, appears herein either expressly or by necessary implication.

Derivation: Personal Property Law, § 6.

§ 19. Disaffirmance of fraudulent acts by executors and others.

An executor, administrator, receiver, assignee or trustee, may, for the benefit of creditors or others interested in personal property, held in trust, disaffirm, treat as void and resist any act done, or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate, or property, and a person who fraudulently receives, takes or in any manner interferes with the personal property of a deceased person, or an insolvent corporation, association, partnership or individual is liable to such executor, administrator, receiver or trustee for the same or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim against the estate of such debtor, exceeding in amount the sum of one hundred dollars, may, without obtaining a judgment on such claim, in like manner, for the benefit of himself and other creditors interested in said estate, disaffirm, treat as void and resist any act done or conveyance, transfer or agreement made in fraud of creditors or maintain an action to set aside such act, conveyance, transfer or agreement. Such claim, if disputed, may be established in such action. The judgment in such action may provide for the sale of the property involved, when a conveyance or transfer thereof is set aside, and that the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

Derivation: Personal Property Law, § 7.

§ 20. When trust vests in supreme court.

On the death of a last surviving or sole surviving trustee of an express trust, the trust estate does not pass to his next of kin or personal representative, but, if the trust be unexecuted, in the absence of a contrary direction on the part of the person creating the same, it vests in the supreme court and shall be executed by some person appointed by the court, whom the court may invest with all or any of the powers and duties of the original trustee or trustees. The beneficiary or beneficiaries of the trust shall have such notice as the court may direct of the application for the appointment of such person; and the person so appointed shall give

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such security as the court may require, and shall be subject to the same requirements of law as to accounting and as to the administration of the trust as apply to testamentary trustees; and shall be entitled to such compensation for his services by way of commissions as may be fixed by any court which has power to pass upon his final account, which shall in no case exceed that now allowed by law to executors and administrators, besides his just and reasonable expenses in the matter in which he is appointed. (Amended by L. 1911, ch. 217, in effect May 31, 1911.)

Derivation: Personal Property Law, § 8, as amended by L. 1902, ch. 150, § 1.

§ 21. Investment of trust funds.

A trustee or other person holding trust funds for investment may invest the same in the same kind of securities as those in which savings banks of this state are by law authorized to invest the money deposited therein, and the income derived therefrom, and in bonds and mortgages on unincumbered real property in this state worth fifty per centum more than the amount loaned thereon, and in shares or parts of such bonds and mortgages, provided that any share or part of such bond and mortgage so held shall not be subordinate to any other shares thereof and shall not be subject to any prior interest therein, and provided further that bonds and mortgages in parts of which any trustee may invest trust funds together with any guaranties of payment, insurance policies and other instruments and evidences of title relating therto shall be held for the benefit of such trustee and of any other persons interested in such bonds and mortgages by a trust company or title guaranty corporation organized under the laws of this state and that a certificate setting forth that such corporation holds such instruments for the benefit of such trustee and of any other persons who may be interested in such bonds and mortgages among whom the corporation holding such instruments may be included, be executed by such trust company or title insurance corporation and delivered to each person who becomes interested in such bond and mortgage. Every corporation issuing any such certificate shall keep a record in proper books of account of all certificates issued pursuant to the foregoing provisions. A trustee or other person holding trust funds may require such personal bonds or guaranties of payment to accompany investments as may seem prudent, and all premiums paid on such guaranties may be charged to or paid out of income, providing that such charge or payment be not more than at the rate of one-half of one per centum per annum on the par value of such investments. But no trustee shall purchase securities hereunder from himself. (Amended by L. 1918, ch. 544, in effect May 8, 1918.)

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Derivation: Personal Property Law, § 9, as amended by L. 1902, ch. 295, § 1, and L. 1907, ch. 669, § 1. For remainder of old section, see Decedent Estate Law, § 111, and Domestic Relations Law, § 85.

§ 22. Commissions of trustees.

Any trustee, under a deed of trust to sell personal property for the benefit of creditors, shall be entitled to and allowed upon an accounting the same commissions as an assignee for the benefit of creditors.

Derivation: L. 1896, ch. 249, § 1.

§ 23. Revocation of trusts upon consent of all persons interested.

Upon the written consent of all the persons beneficially interested in a trust in personal property or any part thereof heretofore or hereafter created, the creator of such trust may revoke the same as to the whole or such part thereof, and thereupon the estate of the trustee shall cease in the whole or such part thereof. (Added by L. 1909, ch. 247, in effect April 23, 1909.)

§ 24. Compromise of controversies arising between claimants to property or estates where the interest of infants, incompetents or persons unknown or not in being are or may be affected.

(a) The supreme court or the surrogate's court having jurisdiction of the estate or property involved may authorize executors, administrators and trustees to adjust by compromise any controversy that may arise between different claimants to the estate or property in their hands to which agreement such executors, administrators or trustees and all other parties in being who claim an interest in such estate shall be parties in person or by guardian as hereinafter provided.

(b) The supreme court or the surrogate's court having jurisdiction of the estate or property involved may likewise authorize the person or persons named as executors in one or more instruments purporting to be the last will and testament of a person deceased, or the petitioners for administration with such will or wills annexed, to adjust by compromise any controversy that may arise between the persons claiming as devisees or legatees under such will or wills and the persons entitled to or claiming the estate of the deceased under the statutes regulating the descent and distribution of intestate estates, to which agreement of compromise the persons named as executors or the petitioners for administration with the will annexed, as the case may be, those claiming as devisees or legatees and those claiming the estate as intestate, shall be parties. Provided that persons named as executors in any instrument who have renounced or shall renounce such executorship shall not be required to be parties to such compromise.

(c) Where an infant, lunatic, person of unsound mind or habitual drunkard is a necessary party to a compromise under this

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section he shall be represented in the proceedings by a special guardian appointed by the court, who shall in the name and on the behalf of the party he represents make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court.

(d) If it appears to the satisfaction of the court that the interests of persons unknown or the future contingent interests of persons not in being are or may be affected by the compromise, the court must appoint some suitable person or persons to represent such interests in the compromise and to make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court. In the event that by the terms of any compromise made pursuant to this section money or property is directed to be set apart or held for the benefit of or to represent the interests of infants, incompetents or persons unknown or unborn, the same may in a proper case be paid or deposited in court and remain subject to the order of the court.

(e) An agreement of compromise made in writing pursuant to this section, if found by the court to be just and reasonable in its effects upon the interests in said estate or property of infants, lunatics, persons of unsound mind, unknown persons or the future contingent interests of persons not in being, shall be valid and binding upon such interests as well as upon the interests of adult persons of sound mind.

(f) An application for the approval of a compromise pursuant to this section must be made by petition duly verified, which shall set forth the provisions of any instruments or documents by virtue of which any claim is made to the property or estate and any and all facts relating to the claims of the various parties to the controversy and the possible contingent interests of persons not in being and all facts which make it proper and necessary that the proposed compromise be approved by the court. After taking proof of the facts either before the court or by a referee and hearing the parties and fully examining into the matter the court must make an order upon the application. **(Added by L. 1919, ch. 419,** in effect May 5, 1919.)

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ARTICLE 3.

AGREEMENTS IN WRITING; WITHOUT CONSIDERATION; FRAUDULENT; FACTORS.

SECTION 30. Definitions.
31. Agreements required to be in writing.
32. Transfers and mortgages of interests in decedents' estates to be in writing, and recorded.
33. Validity of certain agreements made without consideration.
34. Transfers in trust for the transferrer.
35. Transfers and charges with fraudulent intent.
36. Sales and charges other than chattel mortgages without delivery and change of possession. [Repealed.]
37. Fraudulent intent a question of fact.
38. Transfers or charges without consideration.
39. Successors to rights of creditors and purchasers.
40. Bona fide purchasers.
41. Transfer of claims.
42. Regulating loans of money on salaries.
43. Factors' act.
44. Transfer of goods in bulk.
45. Notice of liens upon merchandise or the proceeds thereof to secure loans or advances.

§ 30. Definitions.

As used in this article, the term "transfer" includes sale, assignment, conveyance, deed and gift, and the term "agreement" includes promise and undertaking.

Derivation: Personal Property Law, § 20.

§ 31. Agreements required to be in writing.

Every agreement, promise or undertaking is void, unless it or some note or memorandum thereof be in writing, and subscribed by the party to be charged therewith, or by his lawful agent, if such agreement, promise or undertaking:

1. By its terms is not to be performed within one year from the making thereof;

2. Is a special promise to answer for the debt, default or miscarriage of another person;

3. Is made in consideration of marriage, except mutual promises to marry;

4. Is a conveyance or assignment of a trust in personal property;

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5. Is a subsequent or new promise to pay a debt discharged in bankruptcy;

If goods be sold at public auction, and the auctioneer at the time of the sale, enters in a sale book, a memorandum specifying the nature and price of the property sold, the terms of the sale, the name of the purchaser, and the name of the person on whose account the sale was made, such memorandum is equivalent in effect to a note of the contract or sale, subscribed by the party to be charged therewith. (First paragraph of subd. 6 repealed by L. 1911, ch. 571, § 2, in effect Sept. 1, 1911.)

Derivation: Personal Property Law, § 21.

§ 32. Transfers and mortgages of interests in decedents' estates to be in writing, and recorded.

Every conveyance, assignment, or other transfer of, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as hereinafter provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose conveyance or mortgage is first duly recorded. If such interest is entirely in the personal property of a decedent, the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of administration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same. If such interest is in both the personal and the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the said surrogate and also in the office of the county clerk. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent in a book to be kept for that purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio.

Derivation: L. 1904, ch. 692, § 1, as amended by L. 1908, ch. 173, § 1.

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§ 33. Validity of certain agreements made without consideration.

An agreement for the purchase, sale, transfer or delivery of a certificate or other evidence of debt, issued by the United States or by any state, or a municipal or other corporation, or of any share or interest in the stock of any bank corporation or joint stock association, incorporated or organized under the laws of the United States or of any state, is not void or voidable, for want of consideration, or because of the non-payment of consideration, or because the vendor, at the time of making such contract, is not the owner or possessor of the certificate or certificates or other evidence of debt, share or interest.

Derivation: Personal Property Law, § 22.

§ 34. Transfers in trust for the transferrer.

A transfer of personal property, made in trust for the use of the person making it, is void as against the existing or subsequent creditors of such person.

Derivation: Personal Property Law, § 23.

§ 35. Transfers and charges with fraudulent intent.

Every transfer of any interest in personal property, or the income thereof, and every charge on such property or income, made with the intent to hinder, delay or defraud creditors or other persons of their lawful suits, damages, forfeitures, debts or demands, and every bond or other evidence of debt given, suit commenced, or decree or judgment suffered, with such intent, is void as against every person so hindered, delayed or defrauded.

Derivation: Personal Property Law, § 24.

§ 36. Sales and charges other than chattel mortgages without delivery and change of possession.

[Repealed by L. 1911, ch. 571, § 2, in effect Sept. 1, 1911.]

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§ 37. Fraudulent intent a question of fact.

The question of the existence of fraudulent intent in cases arising under this article, is a question of fact and not of law.

Derivation: Personal Property Law, § 26.

§ 38. Transfers or charges without consideration.

A transfer or charge shall not be adjudged fraudulent as against creditors or purchasers, solely on the ground that it was not founded on a valuable consideration.

Derivation: Personal Property Law, § 27.

§ 39. Successors to rights of creditors and purchasers.

A transfer, charge, sale or assignment, or proceeding declared by this article, to be void, as against creditors or purchasers, is equally void as against the heirs, successors, personal representatives or assignees of such creditors or purchasers.

Derivation: Personal Property Law, § 28.

§ 40. Bona fide purchasers.

This article does not affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appear that such purchaser or incumbrancer had previous notice of the fraudulent intent of his immediate vendor, or of the fraud rendering void the title of such vendor.

Derivation: Personal Property Law, § 29.

§ 41. Transfer of claims.

1. Any claim or demand can be transferred, except in one of the following cases:

(1) Where it is to recover damages for a personal injury, or for a breach of promise to marry.

(2) Where it is founded upon a grant, which is made void by a statute of the state; or upon a claim to or interest in real property, a grant of which, by the transferrer, would be void by such a statute.

(3) Where a transfer thereof is expressly forbidden by a statute

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of the state, or of the United States, or would contravene public policy.

2. A judgment for a sum of money, or directing the payment of a sum of money, recovered upon any cause of action, may be transferred; but if it is vacated or reversed, the transfer thereof does not transfer the cause of action unless the latter was transferable before the judgment was recovered.

3. Where a claim or demand can be transferred, the transfer thereof passes an interest, which the transferee may enforce by an action or special proceeding, or interpose as a defense or counter-claim, in his own name, as the transferrer might have done; subject to any defense or counter-claim, existing against the transferrer, before notice of the transfer, or against the transferee. But this section does not apply, where the rights or liabilities of a party to a claim or demand, which is transferred, are regulated by special provision of law; nor does it vary the rights or liabilities of a party to a negotiable instrument, which is transferred.

Derivation: Code Civil Procedure, §§ 1909, 1910, 1912.

§ 42. Regulating loans of money on salaries.

1. Any person or persons, firm, corporation or company, who shall after the passage of this act, make to any employee an advance of money, or loan, on account of salary or wages due or to be earned in the future by such individual, upon an assignment or note covering such loans or advances, shall not acquire any right to collect or attach the same while in the possession or control of the employer, unless such note or assignment is dated on the same day on which such loan is actually made, and unless within a period of three days after such loan and assignment or note are actually made the party making such loan or loans and taking such assignment or notes shall have filed with the employer or employers of the individual or individuals so assigning his present or prospective salary or wages, a duly authenticated copy of such agreement or assignment or notes under which the claim is made. The day of making a loan or advance within the meaning of this act shall be deemed to be the day when the money is delivered to the borrower, and the subsequent execution of an instrument by virtue of a power of attorney shall not be deemed to affect the time of the actual making of such loan or advance.

2. No action shall be maintained in any of the courts of this state, brought by the holder of any such contract, assignment or

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notes, given by an employee for moneys loaned on account of salary or wages, in which it is sought to charge in any manner the employer or employers, unless a copy of such agreement, assignment or notes, together with a notice of lien, was duly filed with the employer or employers of the person making such agreement, assignment or notes, by the person or persons, corporation or company making said loan within three days after the said loan was actually made and the said agreement, assignment or notes were given as provided in the previous section.

3. Every person, firm or corporation engaged in or seeking to engage in the business of loaning money upon security of an assignment of salary or wages, either earned or to be earned, shall, on or before the first day of July next ensuing the passage of this act, file with the clerk of the county in which said person, firm or corporation has its place of business or transacts business a statement under oath containing the name and residence of the individual; or in case of a firm, the names and residences of the partners; or in the case of a corporation, the names and residences of the officers and directors, managers or trustees of such corporation; and the place or places where said business is transacted by such an individual, firm or corporation. After July the first next ensuing the passage of this act it shall be unlawful to engage in the business of loaning money in the manner set forth in this act without, prior to engaging in such business, filing a statement as provided in this act.

4. The several county clerks of this state shall keep an alphabetical index of all persons, firms or corporations filing certificates provided for herein, and for the indexing and filing of such certificates, they shall receive a fee of twenty-five cents. A copy of such certificate, duly certified to by the county clerk in whose office the same was filed, shall be presumptive evidence in all courts of law in this state of the facts therein contained.

5. After the passage of this act, no person shall directly or indirectly receive or accept for the use and sale of his personal credit or for making any advance or loan of money, either wholly or partly in anticipation of salary or wages due or to be earned, a greater sum than at the rate of eighteen per centum per annum on the amount of such loan or advance, either as a bonus, interest or otherwise, or under the guise of a charge for investigating the status of a person applying for such loan or advance, drawing of papers or other service in connection with such loan or advance, except such charges as are now permitted by section three hun-

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dred and eighty of chapter twenty-five of the laws of nineteen hundred and nine, known as the "general business law."

6. Every person, firm, corporation, director, agent, officer or member thereof who shall violate any provision of this act, directly or indirectly, or assent to such violation, shall be guilty of a misdemeanor. **(Amended by L. 1911, ch. 626, in effect Sept. 1, 1911.)**

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§ 43. Factors' act.

1. Every factor or other agent, entrusted with the possession of any bill of lading, custom-house permit, or warehouseman's receipt for the delivery of any merchandise, and every such factor or agent not having the documentary evidence of title, who shall be intrusted with the possession of any merchandise for the purpose of sale, or as a security for any advances to be made or obtained thereon, shall be deemed to be the true owner thereof, so far as to give validity to any contract made by such agent with any other person, for the sale or disposition of the whole or any part of such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise, for any money advanced, or negotiable instrument or other obligation in writing given by such other person upon the faith thereof.

2. Every person who shall hereafter accept or take any such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise in deposit from any such agent, as a security for any antecedent debt or demand, shall not acquire thereby, or enforce any right or interest in or to such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise or document, other than was possessed or might have been enforced by such agent at the time of such deposit.

3. Nothing contained in the preceding subdivisions of this section shall be construed to prevent the true owner of any merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise so deposited, from demanding or receiving the same, upon prepayment of the money advanced, or on restoration of the security given, on the deposit of such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise, and upon satisfying such lien as may exist thereon in favor of the agent who may have deposited the same; nor from recovering any balance which may remain in the hands of the person with whom such merchandise and any account receivable or other chose in action created by sale or other disposition of such merchandise shall have been deposited, as the produce of the sale thereof, after satisfying the amount justly due to such person by reason of such deposit.

4. Nothing contained in this section shall authorize a common carrier, warehouseman, or other person to whom merchandise or other property may be committed for transportation or storage only, to sell or hypothecate the same. (Amended by **L. 1915,** ch. 273, in effect April 13, 1915.)

Derivation: L. 1830, ch. 179, §§ 3-6.

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§ 44. Transfer of goods in bulk.

1. The sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise, or merchandise and of fixtures pertaining to the conducting of the business of the seller, transferrer or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, shall be void as against the creditors of the seller, transferrer or assignor unless the seller, transferrer or assignor and the purchaser, transferee or assignee shall at least five days before the sale make a full and detailed inventory, showing the quantity and, so far as possible with the exercise of reasonable diligence, the cost price to the seller, transferrer or assignor of each article to be included in the sale; and unless the purchaser, transferee or assignee demand and receive from the seller, transferrer or assignor a written list of names and addresses of the creditors of the seller, transferrer or assignor with the amount of the indebtedness due or owing to each and certified by the seller, transferrer or assignor under oath to be a full, accurate and complete list of his creditors and of his indebtedness; and unless the purchaser, transferee or assignee shall at least five days before taking possession of such merchandise, or merchandise and fixtures, or paying therefor, notify personally or by registered mail every creditor whose name and address are stated in said list, or of which he has knowledge, of the proposed sale and of the price, terms and conditions thereof.

2. Sellers, transferrers and assignors, purchasers, transferees and assignees under this section shall include corporations, associations, co-partnerships and individuals. But nothing contained in this section shall apply to general assignments for the benefit of creditors or to sales by executors, administrators, receivers, trustees in bankruptcy, assignees under a voluntary assignment for the benefit of creditors or any public officer under judicial process.

3. Any purchaser, transferee or assignee who shall not conform to the provisions of this section shall upon application of any of the creditors of the seller, transferrer or assignor become a receiver and be held accountable to such creditors for all the goods, wares, merchandise and fixtures that have come into his possession by virtue of such sale, transfer or assignment: Provided, however, that any purchaser, transferee, or assignee, who shall conform to the provisions of this act shall not be held in any way accountable under this section to any creditor of the seller, transferrer or assignor or to the seller, transferrer or assignor for any of the goods, wares, merchandise or fixtures that have come into the possession of such purchaser, transferee or assignee by virtue of such sale, transfer or assignment. (Amended by L. 1914, ch. 507, in effect April 23, 1914.)

Derivation: L. 1907, ch. 722, §§ 1-3.

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§ 45. Notice of liens upon merchandise or the proceeds thereof to secure loans or advances.

Liens upon merchandise or the proceeds thereof created by agreement for the purpose of securing the repayment of loans or advances made or to be made upon the security of said merchandise and the payment of commissions or other charges provided for by such agreement, shall not be void or presumed to be fraudulent or void as against creditors or otherwise, by reason of want of delivery to or possession on the part of the lienor, whether such merchandise shall be in existence at the time of the creation of the lien or shall come into existence subsequently thereto or shall subsequently thereto be acquired by the person creating the lien, provided there shall be placed and maintained in a conspicuous place at the entrance of every building or place in or at which such merchandise, or any part thereof, shall be located, kept or stored, a sign on which is printed in legible English, the name of the lienor and a designation of said lienor as lienor, factor or consignee, and provided further that a notice of the lien is filed, stating:

1. The name of the lienor, and the name under which the lienor does business, if an assumed name; the principal place of business of the lienor within the state; and if the lienor is a partnership or association, the names of the partners, and if a corporation, the state under whose laws it was organized.

2. The name of the person creating the lien, and the interest of such person in the merchandise, as far as known to the lienor.

3. The general character of merchandise subject to the lien, or which may become subject thereto, and the period of time during which such loans or advances may be made under the terms of the agreement creating the lien.

Such notice must be verified by the lienor or his agent, to the effect that the statements therein contained are true to his knowledge. It must be filed with the officer designated in section two hundred and thirty-two of the lien law, in every town or city where the merchandise subject to the lien, or any part thereof, is or at any time shall be located, kept or stored, and also in the town or city where the principal office or place of business of the lienor within the state is or at any time shall be located. Such officers shall file every such notice presented to them for that pur-

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pose and shall endorse thereon its number and the time of its receipt. They shall enter in a book provided for that purpose, in separate columns, the names of the parties named in each notice so filed under the head of "owners" and "lienors," the number of such notice and the date of the filing thereof, and the general character of the merchandise as therein stated. The names of the persons creating the liens, as stated in the notice, shall be arranged in alphabetical order under the head of "owners." Such officers at the time of filing such notice shall upon request issue to the person filing the same a receipt in writing, containing the substance of the entries made or to be made as hereinabove provided. Such officers shall be entitled to receive for their services hereunder, fees at the same rates as provided in section two hundred and thirty-four of the lien law.

Such notice may be filed at any time after the making of the agreement, and shall be effectual from the time of the filing thereof as against all rights of third parties thereafter arising. Upon the payment or satisfaction of indebtedness secured by any lien specified in this section, the lienor or his legal representative, upon the request of any person interested in the said merchandise, must sign and acknowledge a certificate setting forth such payment or satisfaction. The officer or officers with whom the notice of lien is filed must, on receipt of such certificate or a copy thereof certified as required by law, file the same in his office and write the word "discharged" in the book where the notice of lien is entered opposite the entry thereof, and the lien is thereby discharged.

If the agreement creating such lien shall also give the lienor a right to or lien upon accounts receivable resulting from or which may result from a sale or sales of the merchandise subject to the lien, or of part of such merchandise, such right or lien shall not be void or ineffectual as against creditors or otherwise, by reason of want of possession of any such account on the part of the lienor or by reason of failure to make or deliver a further assignment of any such account, provided a bill, invoice, statement or notice shall be mailed, sent or delivered to the person owing such account receivable, stating or indicating that the account is payable to the lienor, and such mailing, sending or delivery of such bill, invoice, statement or notice shall have the same effect as a formal assignment of such account to the lienor named therein.

(Added by L. 1911, ch. 326, in effect June 13, 1911.)

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ARTICLE 4.

CONTRACTS FOR THE CONDITIONAL SALE OF GOODS AND CHATTELS.

SECTION 60. Definitions.
61. Conditional sale of railroad equipment and rolling stock.
62. Conditions and reservations in contracts for the sale of goods and chattels.
63. Where contract to be filed.
64. Indorsement, entry, refiling and discharge of conditional contracts.
64a. Discharge of lien of contract for conditional sale of chattels attached to real property.
65. Sale of property retaken by vendor.
66. Notice of sale.
67. Disposition of proceeds.

§ 60. Definitions.

The term "conditional vendor," when used in this article, means the person contracting to sell goods and chattels upon condition that the ownership thereof is to remain in such person, until such goods and chattels are fully paid for or until the occurrence of any future event or contingency; the term "conditional vendee," when so used, means the person to whom such goods and chattels are so sold.

Derivation: Lien Law, L. 1897, ch. 418, § 110.

§ 61. Conditional sale of railroad equipment and rolling stock.

Whenever any railroad equipment and rolling stock is sold, leased or loaned under a contract which provides that the title to such property, notwithstanding the use and possession thereof by the vendee, lessee or bailee, shall remain in the vendor, lessor or bailor, until the terms of the contract as to the payment of instalments or rentals payable, or the performance of other obligations thereunder, are fully complied with, and that title to such property shall pass to the vendee, lessee or other bailee on full payment therefor, such contract shall be invalid as to any subsequent judgment creditor of or purchaser from such vendee, lessee or bailee for a valuable consideration, without notice, unless

1. Such contract is in writing, duly acknowledged and recorded in the book in which real estate mortgages are recorded in the office of the county clerk or register of the county in which is located

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the principal office or place of business of such vendee, lessee or bailee; and unless

2. Each locomotive or car so sold, leased or loaned, has the name of the vendor, lessor or bailor, or of the assignee of such vendor, lessor or bailor, plainly marked upon both sides thereof, followed by the word owner, lessor, bailor or assignee, as the case may be.

Derivation: Lien Law, L. 1897, ch. 418, § 111.

§ 62. Conditions and reservations in contracts for the sale of goods and chattels.

Except as otherwise provided in this article, all conditions and reservations in a contract for the conditional sale of goods and chattels, accompanied by delivery of the thing contracted to be sold, to the effect that the ownership of such goods and chattels is to remain in the conditional vendor or in a person other than the conditional vendee, until they are paid for, or until the occurrence of a future event or contingency, shall be void as against subsequent purchasers, pledgees or mortgagees, in good faith, and as to them the sale shall be deemed absolute, unless such contract of sale, containing such conditions and reservations, or a true copy thereof, be filed as directed in this article, and unless the other provisions of the lien law applicable to such contracts are duly complied with; provided that every such contract permitting the resale of such goods by the vendee shall be valid whether filed or not, but shall be void as against subsequent purchasers, pledgees or mortgagees in good faith for value, and without actual knowledge of the conditions of such contract, and as to them the sale shall be deemed absolute. Every such contract for the conditional sale of any goods and chattels attached, or to be attached, to a building, shall be void as against subsequent bona fide purchasers or incumbrancers of the premises on which said building stands, and as to them the sale shall be deemed absolute, unless, on or before the date of the delivery of such goods or chattels at such building, such contract shall have been duly and properly filed and indexed as directed in this article and unless said contract shall contain a brief description, sufficient for identification, of the premises which said building occupied, or upon which said building stands, and if in a city or village its location by street number, if known, and if in a city or county where the block system of recording and indexing conveyances is in use, the section and block within which it is located. (Amended by L. 1920, ch. 635, in effect May 10, 1920.)

Derivation: Lien Law, L. 1897, ch. 418, § 112, as amended by L. 1904, ch. 698, § 1.

§ 63. Where contract to be filed.

Such contracts except contracts for the conditional sale of goods and chattels supplied for a building and attached, or to be attached

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thereto, shall be filed in the city or town where the conditional vendee resides, if he resides within the state at the time of the execution thereof, and if not, in the city or town where such property is at such time. Such contract shall be filed in the city of New York, as follows, namely: in the borough of Brooklyn in said city, such instrument shall be filed in the office of the register of the county of Kings; in the borough of Queens in said city, in the office of the clerk of Queens county; in the borough of Richmond in said city, in the office of the clerk of the county of Richmond; in the borough of Manhattan in said city, in the office of the register of the county of New York, and in the borough of the Bronx in said city, in the office of the register of the county of Bronx; in every other city or town of the state, in the office of the city or town clerk, unless there is a county clerk's office in such city or town, in which case it shall be filed in such office. But all such contracts for the conditional sale of goods and chattels, attached or to be attached to a building, shall be filed with the register of the city or county or with the county clerk of the county, in case there is no register of such county, in which the premises whereon the said building stands are located. (Amended by L. 1915, ch. 14, in effect March 1, 1915.)

Derivation: Lien Law, L. 1897, ch. 418, § 113, as amended by L. 1900, ch. 248, § 4, and L. 1904, ch. 698, § 2.

§ 64. Indorsement, entry, refiling and discharge of conditional contracts.

The provisions of article ten of the lien law relating to chattel mortgages apply to the indorsement, entry, refiling and discharge of contracts for the conditional sale of goods and chattels, except contracts for the conditional sale of goods and chattels, attached or to be attached to a building. The officers with whom such first mentioned contracts are filed shall enter the future contingency or event required to occur before the ownership of said goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract and the time when due. The name of the conditional vendor shall be entered in the column of "mortgagees," and the name of the conditional vendee in the column of "mortgagors." Where such contracts are for goods and chattels attached or to be attached to a building, the following provisions apply to the indorsement, entry, refiling and discharge thereof. The above-named officers, with whom such contracts are directed to be filed, shall enter the future contingency or event required to occur before the ownership of said goods and chattels shall pass from the vendor to the vendee, the amount due upon such contract, and the time when due, and shall file every such contract presented to them for that purpose, and indorse thereon its number and time of receipt; they shall enter in a book provided for that purpose, in separate columns, the names of all the parties to each contract so filed, arranged in alphabetical order, under the head of "vendees" and "vendors," the number of such contract and the date of the filing thereof, and under a column headed "property," they shall enter a

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brief description sufficient for identification of the land upon which said building stands, and if in a city or village, its location by street and number, if known, and if in a city or county where the block system of recording and indexing conveyances is in use, the section and block in which the said land is situated. The said officers shall also keep an index, so as to afford correct and easy reference to the books containing the entries in regard to such last-named contracts. In all cities and counties where the block system of recording and indexing conveyances is in use, the index shall be arranged according to the block numbers. A contract for the conditional sale of goods and chattels, attached or to be attached to a building, shall be invalid as against creditors of the conditional vendee and against subsequent purchasers or mortgagees in good faith of such goods and chattels or of the premises upon which the said building stands, after the expiration of the first or any succeeding term of one year, reckoning from the time of the first filing, unless: (1) within thirty days preceding the expiration of such term a statement containing a description of such contract, the names of the parties, the time when and place where filed, the interest of the conditional vendor or of any person who has succeeded to his interest in the property, claimed by virtue thereof; or (2) a copy of such contract and its indorsements, together with a statement attached thereto or indorsed thereon, showing the interest of the conditional vendor or of any person who has succeeded to his interest in the contract, is filed in the office where the contract was originally required to be filed; provided, however, if at the time such contract was executed the premises whereon the said building stands was then in the county of New York but is now located in the new county of Bronx, then such statement or a copy of such contract must be filed in the office of the register of the county of Bronx; and the officer with whom such statement or copy of such contract must be filed, as in this section provided, shall enter, in a separate column, in the book above provided for, in a column headed "date of re-filing," the date of the refiling of the said contract. The officers performing services under this article are entitled to receive the same fees as for like services relating to chattel mortgages. Upon the title to the goods and chattels affected by any such last-mentioned contract becoming absolute in the conditional vendee or his successor in interest by the payment of the full consideration for which any such contract was made, the conditional vendor, his assignee or legal representative, upon the request of the conditional vendee or of any person interested in the property covered by such contract, must sign and acknowledge a certificate setting forth such payment. The officer with whom such contract is filed must, on receipt of such certificate, file the same in his office and write the word "discharged" in the book where the contract is entered, opposite the entry thereof, and the contract is thereby discharged. (Amended by L. 1915, ch. 455, in effect May 1, 1915.)

Derivation: Lien Law, L. 1897, ch. 418, § 114, as amended by L. 1904, ch. 698, § 3.

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§ 64-a. Discharge of lien of contract for conditional sale of chattels attached to real property.

The lien upon real property of a contract for the conditional sale of goods and chattels, attached or to be attached to a building, filed as provided in this article in the office of a register of deeds or county clerk, may also be discharged in the following manner: Either before or after the beginning of any action or proceeding to enforce the lien upon such property of any such contract, the owner of such real property or of the building thereon may execute an undertaking with two or more sufficient sureties, who shall be freeholders, to the clerk or register of deeds of the county where the premises are situated, in such sum as a justice of the supreme court or the county judge may direct, not less than the amount due and to become due upon such contract, conditioned for the payment of any judgment which may be rendered against such real property or building on account of such contract. The sureties shall together justify in double the sum named in the undertaking. A copy of the undertaking, with notice that the sureties will justify before a justice of the supreme court or the county judge at the time and place therein mentioned, must be served upon the conditional vendor or his attorney not less than five days before such time. Upon the approval of the undertaking by the judge or justice an order shall be made discharging such lien. The execution of any such bond or undertaking by any fidelity or surety company authorized by the laws of this state to transact business, shall be equivalent to the execution of such bond or undertaking by two sureties; and such company, if excepted to, shall justify through its officers or attorney in the manner required by law of fidelity and surety companies. Any such company may execute any such bond or undertaking as surety by the hand of its officers, or attorney, duly authorized thereto by resolution of its board of directors, a certified copy of which resolution, under the seal of such company, shall be filed with each bond or undertaking. If the conditional vendor cannot be found, or does not appear by attorney, such service may be made by leaving a copy of such undertaking and notice at the conditional vendor's place of residence or if a corporation at its principal place of business within the state as stated in the contract, with a person of suitable age and discretion therein, or if the house of his abode or its place of business is not stated in said contract and is not known, then in such manner as the court may direct. The premises, if any, described in the contract as the vendor's residence or place of business shall be deemed his said residence or its place of business for the purposes of said service at the time thereof, unless it is shown affirmatively that the person serving the papers or directing the service had knowledge to the contrary. (Added by L. 1917, ch. 697, in effect May 31, 1917.)

§ 65. Sale of property retaken by vendor.

Whenever articles are sold upon the condition that the title thereto shall remain in the vendor, or in some other person than the vendee, until the payment of the purchase price, or until the occurrence of a

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future event or contingency, and the same are retaken by the vendor, or his successor in interest, they shall be retained for a period of thirty days from the time of such retaking, and during such period the vendee or his successor in interest, may comply with the terms of such contract, and thereupon receive such property. After the expiration of such period, if such terms are not complied with, the vendor, or his successor in interest, may cause such articles to be sold at public auction. Unless such articles are so sold within thirty days after the expiration of such period, the vendee or his successor in interest may recover of the vendor the amount paid on such articles by such vendee or his successor in interest under the contract for the conditional sale thereof.

Derivation: Lien Law, L. 1897, ch. 418, § 116, as amended by L. 1900, ch. 762, § 1.

§ 66. Notice of sale.

Not less than fifteen days before such sale, a printed or written notice shall be served personally upon the vendee, or his successor in interest, if he is within the county where the sale is to be held; and if not within such county, or he cannot be found therein, such notice must be mailed to him at his last known place of residence.

Such notice shall state:

1. The terms of the contract.
2. The amount unpaid thereon.
3. The amount of expenses of storage.
4. The time and place of the sale, unless such amounts are sooner paid.

Derivation: Lien Law, L. 1897, ch. 418, § 117.

§ 67. Disposition of proceeds.

Of the proceeds of such sale, the vendor or his successor in interest may retain the amount due upon his contract, and the expenses of storage and of sale; the balance thereof shall be held by the vendor or his successor in interest, subject to the demand of the vendee or his successor in interest, and a notice that such balance is so held shall be served personally or by mail upon the vendee or his successor in interest. If such balance is not called for within thirty days from the time of sale, it shall be deposited with the treasurer or chamberlain of the city or village, or the supervisor of the town where such sale was held, and there shall be filed therewith a copy of the notice served upon the vendee or his successor in interest and a verified statement of the amount unpaid upon the contract, expenses of storage and of sale and the amount of such balance. The officer with whom such balance was deposited shall credit the vendee or his successor in interest with the amount thereof and pay the same to him on demand after sufficient proof of identity. If such balance remains in possession of such officer for a period of five years, unclaimed by the person legally entitled thereto, it shall be transferred to the funds of the town, village or city, and be applied and used as other moneys belonging to such town, village or city.

Derivation: Lien Law, L. 1897, ch. 418, § 118.

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ARTICLE 5.

(Entire article added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

SALES OF GOODS.

SECTION 82. Contracts to sell and sales.
83. Capacity; liabilities for necessaries.
84. Form of contract or sale.
85. Statute of frauds.
86. Existing and future goods.
87. Undivided shares.
88. Destruction of goods sold.
89. Destruction of goods contracted to be sold.
90. Definition and ascertainment of price.
91. Sale at a valuation.
92. Effect of conditions.
93. Definition of express warranty.
94. Implied warranties of title.
95. Implied warranty in sale by description.
96. Implied warranties of quality.
97. Implied warranties in sale by sample.
98. No property passes until goods are ascertained.
99. Property in specific goods passes when parties so intend.
100. Rules for ascertaining intention.
101. Reservation of right of possession or property when goods are shipped.
102. Sale by auction.
103. Risk of loss.
104. Sale by a person not the owner.
105. Sale by one having a voidable title.
106. Sale by seller in possession of goods already sold.
107. Creditors' rights against sold goods in seller's possession.
108. Definition of negotiable documents of title.
109. Negotiation of negotiable documents by delivery.
110. Negotiation of negotiable documents by indorsement.
111. Negotiable documents of title marked "not negotiable."
112. Transfer of non-negotiable documents.
113. Who may negotiate a document.
114. Rights of person to whom document has been negotiated.
115. Rights of person to whom document has been transferred.
116. Transfer of negotiable document without indorsement.
117. Warranties on sale of document.
118. *Indorsement not a guarantee.

* So in original.

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SECTION 119. When negotiation not impaired by fraud, mistake or duress.
120. Attachment or levy upon goods for which a negotiable document has been issued.
121. Creditors' remedies to reach negotiable documents.
122. Seller must deliver and buyer accept goods.
123. Delivery and payment are concurrent conditions.
124. Place, time and manner of delivery.
125. Delivery of wrong quantity.
126. Delivery in installments.
127. Delivery to a carrier on behalf of the buyer.
128. Right to examine the goods.
129. What constitutes acceptance.
130. Acceptance does not bar action for damages.
131. Buyer is not bound to return goods wrongfully delivered.
132. Buyer's liability for failing to accept delivery.
133. Definition of unpaid seller.
134. Remedies of an unpaid seller.
135. When right of lien may be exercised.
136. Lien after part delivery.
137. When lien is lost.
138. Seller may stop goods on buyer's insolvency.
139. When goods are in transit.
140. Ways of exercising the right to stop.
141. When and how resale may be made.
142. When and how the seller may rescind the sale.
143. Effect of sale of goods subject to lien or stoppage in transitu.
144. Action for the price.
145. Action for damages for non-acceptance of goods.
146. When seller may rescind contract or sale.
147. Action for converting or detaining goods.
148. Action for failing to deliver goods.
149. Specific performance.
150. Remedies for breach of warranty.
151. Interest and special damages.
152. Variation of implied obligations.
153. Rights may be enforced by action.
154. Rule for cases not provided for by this article.
155. Provisions not applicable to mortgages.
156. Definitions.
157. Article does not apply to existing sales or contracts to sell.
158. No repeal of uniform warehouse receipt laws or uniform bills of lading laws.

§ 82. Contracts to sell and sales.

1. A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

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2. A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

3. A contract to sell or a sale may be absolute or conditional.

4. There may be a contract to sell or a sale between one part owner and another. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 83. Capacity; liabilities for necessaries.

Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property. Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor. Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 84. Form of contract or sale.

Subject to the provisions of this article and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 85. Statute of frauds.

1. A contract to sell or a sale of any goods or choses in action of the value of fifty dollars or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

2. The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary

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course of the seller's business, the provisions of this section shall not apply.

3. There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 86. Existing and future goods.

1. The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by the seller after the making of the contract to sell, in this article called "future goods."

2. There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

3. Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 87. Undivided shares.

1. There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

2. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight or measure bought bears to the number, weight or measure of the mass. If the mass contains less than the number, weight or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 88. Destruction of goods sold.

1. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

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2. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided, or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 89. Destruction of goods contracted to be sold.

1. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

2. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided, or

(b) As binding the seller to transfer the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 90. Definition and ascertainment of price.

1. The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

2. The price may be made payable in any personal property.

3. Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this article shall not apply.

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4. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 91. Sale at a valuation.

1. Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, cannot or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

2. Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by the appropriate parts of this article. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 92. Effect of condition.

1. Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

2. Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 93. Definition of express warranty.

Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 94. Implied warranties of title.

In a contract to sell or a sale, unless contrary intention appears, there is

1. An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

3. An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

4. This section shall not, however, be held to render liable a sheriff, auctioneer, mortgagee or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 95. Implied warranty in sale by description.

Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the description and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 96. Implied warranties of quality.

Subject to the provisions of this article and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

2. Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower

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or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

3. If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

4. In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

5. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

6. An express warranty or condition does not negative a warranty or condition implied under this act unless inconsistent therewith. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 97. Implied warranties in sale by sample.

In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in subdivision three of section one hundred and twenty-eight.

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 98. No property passes until goods are ascertained.

Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section eighty-seven. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 99. Property in specific goods passes when parties so intend.

1. Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

2. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the

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parties, usages of trade and the circumstances of the case. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 100. Rules for ascertaining intention.

Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.

Rule 1. Where there is an unconditioned contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

Rule 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

Rule 3. 1. When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

2. When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

Rule 4. 1. Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

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2. Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section one hundred and one. This presumption is applicable, although by the terms of the contract the buyer is to pay the price before receiving delivery of the goods, and the goods are marked with the words "collect on delivery" or their equivalents.

Rule 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 101. Reservation of right of possession or property when goods are shipped.

1. Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

2. Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

3. Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

4. Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of ex-

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change, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.

§ 102. Sale by auction.

In the case of sale by auction—

1. Where goods are put up for sale by auction in lots each lot is the subject of a separate contract of sale.

2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

3. A right to bid may be reserved expressly by or on behalf of the seller.

4. Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 103. Risk of loss.

Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the

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property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 104. Sale by person not the owner.

1. Subject to the provisions of this article, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

2. Nothing in this act, however, shall affect—

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 105. Sale by one having a voidable title.

Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 106. Sale by seller in possession of goods already sold.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 107. Creditors' rights against sold goods in seller's possession.

Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 108. Definition of negotiable documents of title.

A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 109. Negotiation of negotiable documents by delivery.

A negotiable document of title may be negotiated by delivery—

(a) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b) Where by the terms of the document the carrier, warehouseman or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where by the terms of a negotiable document of title the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 110. Negotiation of negotiable documents by indorsement.

A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 111. Negotiable documents of title marked "not negotiable."

If a document of title which contains an undertaking by a carrier, warehouseman or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "non-negotiable" of the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this act. But nothing in this act contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable," "non-negotiable," or the like. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 112. Transfer of non-negotiable documents.

A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A non-negotiable document cannot be negotiated and the indorsement of such a document gives the transferee no additional right. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 113. Who may negotiate a document.

A negotiable document of title may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 114. Rights of person to whom document has been negotiated.

A person to whom a negotiable document of title has been duly negotiated acquires thereby,

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

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(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 115. Rights of person to whom document has been transferred.

A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferror, the title to the goods, subject to the terms of any agreement with the transferror. If the document is non-negotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document. Prior to the notification of such bailee by the transferror or transferee of a non-negotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferror, or by a notification to such bailee by the transferror or a subsequent purchaser from the transferror of a subsequent sale of the goods by the transferror. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 116. Transfer of negotiable document without indorsement.

Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferror is essential for negotiation, the transferee acquires a right against the transferror to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 117. Warranties on sale of document.

A person who for value negotiates or transfers a document of title by indorsement or delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(a) That the document is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the document, and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose,

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whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.

§ 118. Indorser not a guarantor.

The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 119. When negotiation not impaired by fraud, mistake or duress.

The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake or duress. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 120. Attachment or levy upon goods for which a negotiable document has been issued.

If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they cannot thereafter, while in the possession of such bailee, be attached by garnishment or otherwise or be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 121. Creditors' remedies to reach negotiable documents.

A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at

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law or in equity in regard to property which cannot be readily attached or levied upon by ordinary legal process. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 122. Seller must deliver and buyer accept goods.

It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 123. Delivery and payment are concurrent conditions.

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 124. Place, time and manner of delivery.

1. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one, and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

2. Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

3. Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

4. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

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5. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 125. Delivery of wrong quantity.

1. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

3. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

4. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 126. Delivery in installments.

1. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

2. Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 127. Delivery to a carrier on behalf of the buyer.

1. Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in section one hundred, rule five, or unless a contrary intent appears.

2. Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

3. Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 128. Right to examine the goods.

1. Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity to examine them for the purpose of ascertaining whether they are in conformity with the contract.

2. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

3. Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words " collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 129. What constitutes acceptance.

The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 130. Acceptance does not bar action for damages.

In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know, of such breach, the seller shall not be liable therefor. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 131. Buyer is not bound to return goods wrongly delivered.

Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 132. Buyer's liability for failing to accept delivery.

When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 133. Definition of unpaid seller.

1. The seller of goods is deemed to be an unpaid seller within the meaning of this article.

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(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

2. In this part of this act the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 134. Remedies of an unpaid seller.

1. Subject to the provisions of this article, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods, as such has

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by this article;

(d) A right to rescind the sale as limited by this article.

2. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 135. When right of lien may be exercised.

1. Subject to the provisions of this article, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.

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§ 136. Lien after part delivery.

Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 137. When lien is lost.

1. The unpaid seller of goods loses his lien thereon

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods;

(c) By waiver thereof.

2. The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 138. Seller may stop goods on buyer's insolvency.

Subject to the provisions of this article, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 139. When goods are in transit.

1. Goods are in transit within the meaning of section one hundred and thirty-eight.

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

2. Goods are no longer in transit within the meaning of section one hundred and thirty-eight,

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(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

3. If the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.

4. If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 140. Ways of exercising the right to stop.

1. The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

2. When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller. The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 141. When and how resale may be made.

1. Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the

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payment of the price an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

3. It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

4. It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

5. The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 142. When and how the seller may rescind the sale.

1. An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 143. Effect of sale of goods subject to lien or stoppage in transitu.

Subject to the provisions of this article, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 144. Action for the price.

1. Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

2. Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

3. Although the property in the goods has not passed, if they cannot readily be resold for a reasonable price, and if the provisions of section one hundred and forty-five are not applicable, the seller may offer to deliver the goods to the buyer, and if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 145. Action for damages for nonacceptance of the goods.

1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

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2. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

4. If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 146. When seller may rescind contract or sale.

Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 147. Action for converting or detaining goods.

Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 148. Action for failing to deliver goods.

1. Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

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2. The measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 149. Specific performance.

Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 150. Remedies for breach of warranty.

1. Where there is a breach of warranty by the seller, the buyer may, at his election,

(a) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

2. When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

3. Where the goods have been delivered to the buyer, he cannot rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or

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to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

4. Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

5. Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to accept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section one hundred and thirty-four.

6. The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

7. In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they had answered to the warranty. (Added by L. 1911, ch. 571. in effect Sept. 1, 1911.)

§ 151. Interest and special damages.

Nothing in this article shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 152. Variation of implied obligations.

Where any right, duty or liability would arise under a contract to sell or a sale by implication of law, it may be negatived, or varied by express agreement or by the course of dealing between the parties, or by custom, if the custom be such as to bind both parties to the contract or the sale. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 153. Rights may be enforced by action.

Where any right, duty or liability is declared by this article, it may, unless otherwise by this article provided, be enforced by action. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 154. Rule for cases not provided for by this article.

In any case not provided for in this article, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall continue to apply to contracts to sell and to sales of goods. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 155. Provisions not applicable to mortgages.

The provisions of this article relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge or other security. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 156. Definitions.

1. In this article, unless the context or subject-matter otherwise requires:

"Action" includes counterclaim, set-off and suit in equity.

"Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person.

"Defendant" includes a plaintiff against whom a right of set-off or counterclaim is asserted.

"Delivery" means voluntary transfer of possession from one person to another.

"Divisible contract to sell or sale" means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

"Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

"Fault" means wrongful act or default.

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"Fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" include all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in sections of this act relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchaser" includes mortgagee and pledgee.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

2. A thing is done "in good faith" within the meaning of this article when it is in fact done honestly, whether it be done negligently or not.

3. A person is insolvent within the meaning of this article who either has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

4. Goods are in a "deliverable state" within the meaning of this article when they are in such a state that the buyer would, under the contract, be bound to take delivery of them. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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§ 157. Article does not apply to existing sales or contracts to sell.

None of the provisions of this article shall apply to any sale, or to any contract to sell, made prior to the taking effect of this article. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

§ 158. No repeal of uniform warehouse receipt laws.

Nothing in this act or in any repealing clause thereof shall be construed to repeal or limit any of the provisions of the law to make uniform the law of warehouse receipts, or of the law, if enacted, to make uniform the law of bills of lading, or of section nine hundred and forty-three of chapter eighty-eight of the laws of nineteen hundred and nine, constituting chapter forty of the consolidated laws. (Added by L. 1911, ch. 571, in effect Sept. 1, 1911.)

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ARTICLE 6.*

(Renumbered by L. 1911, ch. 571, in effect Sept. 1, 1911.)

LAWS REPEALED; WHEN TO TAKE EFFECT.

SECTION 80. Laws repealed.
81. When to take effect.

§ 165. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed. (Renumbered by L. 1911, ch. 571, in effect Sept. 1, 1911.)

Derivation: Personal Property Law, § 40.

§ 166. When to take effect.

This chapter shall take effect immediately. (Renumbered by L. 1911, ch. 571, in effect Sept. 1, 1911.)

Derivation: Personal Property Law, § 41.

*** In the renumbering of this article by L. 1911, ch. 571, article 7 added by L. 1911, ch. 248 was overlooked. The numbering of these two articles should have been transposed. L. 1913, ch. 600, which added another article 6, should have also transposed this article 6 and made it article 8.**

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SCHEDULE OF LAWS REPEALED.

Revised Statutes....	Part 1, chapter 20, title 19, article 2....	All
Revised Statutes....	Part 2, chapter 1, title 2, section.....	63
Revised Statutes....	Part 2, chapter 4, title 4, ...	All
Revised Statutes....	Part 2, chapter 7, title 2, ...	All
Revised Statutes....	Part 2, chapter 7, title 3, ...	All

Laws of	Chapter	Section
1787.....	44.....	Part relating to personal property
R. L. 1813...	19.....	1
1828.....	20.....	15, ¶¶ 31, 45 (2d meet.)
1830	179.....	3-6
1840.....	318.....	Part relating to personal property
1841.....	261.....	Part relating to personal property
1846.....	74.....	Part relating to personal property
1855.....	432.....	Part relating to personal property
1858.....	134.....	All
1858.....	314.....	All
1863.....	464.....	All
1882.....	185.....	All
1882.....	324.....	All
1889.....	65.....	All
1889.....	487.....	All

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Laws of	Chapter	Section
1891.....	173.....	All
1892.....	516.....	Part relating to personal property
1893.....	452.....	All
1893.....	701.....	Part relating to personal property
1894.....	740.....	All
1896.....	249.....	Part relating to personal property
1897.....	417.....	All except pt. of § 9 relating to guardians and executors, administrators and other trustees of deceased persons.
1897.....	418.....	110–118
1898.....	354.....	All
1900.....	248.....	4
1900.....	762.....	All
1901.....	291.....	Part relating to personal property
1902.....	150.....	All
1902.....	295.....	All, except pt. relating to guardians and executors, administrators and other trustees of deceased persons.
1902.....	528.....	All
1903.....	87.....	All
1904.....	77.....	All
1904.....	259.....	All
1904.....	569.....	All
1904.....	692.....	Part relating to personal property
1904.....	698.....	All
1905.....	393.....	Part relating to personal property
1905.....	503.....	All
1907.....	669.....	All
1907.....	722.....	All
1908.....	173.....	Part relating to personal property
Code Civil Procedure.....		1909, 1910, 1912

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ARTICLE 6.*

(Entire article added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

TRANSFERS OF SHARES OF STOCK IN CORPORATIONS.

SECTION 162. How title to certificates and shares may be transferred.
163. Powers of those lacking full legal capacity and of fiduciaries not enlarged.
164. Corporation not forbidden to treat registered holder as owner.
165. Title derived from certificate extinguishes title derived from a separate document.
166. Who may deliver a certificate.
167. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.
168. Rescission of transfer.
169. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.
170. Delivery of unindorsed certificate imposes obligation to indorse.
171. Ineffectual attempt to transfer amounts to a promise to transfer.
172. Warranties on sale of certificate.
173. No warranty implied from accepting payment of a debt.
174. No attachment or levy upon shares unless certificate surrendered or transfer enjoined.
175. Creditor's remedies to reach certificate.
176. There shall be no lien or restriction unless indicated on certificate.
177. Alteration of certificate does not divest title to shares.
178. Lost or destroyed certificate.
179. Rule for cases not provided for by this act.
180. Interpretation shall give effect to purpose of uniformity.
181. Definition of indorsement.
182. Definition of person appearing to be the owner of certificate.
183. Other definitions.
184. Article does not apply to existing certificates.
185. Inconsistent legislation repealed.

§ 162. How title to certificates and shares may be transferred.

Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

* L. 1913, ch. 600, which added this article, overlooked the fact that there already was an article 6, which should have been renumbered article 8.

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(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 163. Powers of those lacking full legal capacity and of fiduciaries not enlarged.

Nothing in this article shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or administrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 164. Corporation not forbidden to treat registered holder as owner.

Nothing in this article shall be construed as forbidding a corporation,

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 165. Title derived from certificate extinguishes title derived from a separate document.

The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate with the indorsement of the person appearing by the certificate to be the owner thereof, or shall purchase and obtain delivery of such certificate and the

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written assignment or power of attorney of such person, though contained in a separate document. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 166. Who may deliver a certificate.

The delivery of a certificaae to transfer title in accordance with the provisions of section one hundred and sixty-two is effectual, except as provided in section one hundred and sixty-eight, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 167. Indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority.

The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in section one hundred and sixty-eight, though the indorser or transferor,

(a) Was induced by fraud, duress or mistake to make the indorsement or delivery, or

(b) Has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) Has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) Has received no consideration. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 168. Rescission of transfer.

If the indorsement or delivery of a certificate,

(a) Was procured by fraud or duress, or

(b) Was made under such mistake as to make the indorsement or delivery inequitable; or

If the delivery of a certificate was made

(c) Without authority from the owner, or

(d) After the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:

1. The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,

2. The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

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Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 169. Rescission of transfer of certificate does not invalidate subsequent transfer by transferee in possession.

Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part or the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 170. Delivery of unindorsed certificate imposes obligation to indorse.

The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 171. Ineffectual attempt to transfer amounts to a promise to transfer.

An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 172. Warranties on sale of certificate.

A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants —

(a) That the certificate is genuine,

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(b) That he has a legal right to transfer it, and

(c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 173. No warranty implied from accepting payment of a debt.

A mortgagee, pledgee or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 174. No attachment or levy upon shares unless certificate surrendered or transfer enjoined.

No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporattion shall not be compelled to issue a new certificate for the stack until the old certificate is surrendered to it. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 175. Creditor's remedies to reach certificate.

A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 176. There shall be no lien or restriction unless indicated on certificate.

There shall be no lien in favor of a corporation upon the shares represented by a certificate issued by such corporation and there shall be no restriction upon the transfer of shares so represented by virtue of any by-law of such corporation, or otherwise, unless the right of the corporation to such lien or the restriction is stated

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upon the certificate. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 177. Alteration of certificate does not divest title to shares.

The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 178. Lost or destroyed certificate.

Where a certificate has been lost or destroyed, a court of competent jurisdiction may order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of a new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees. The issue of a new certificate under an order of the court as provided in this section shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 179. Rule for cases not provided for by this act.

In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause, shall govern. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 180. Interpretation shall give effect to purpose of uniformity.

This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

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§ 181. Definition of indorsement.

A certificate is indorsed when an assignment or a power of attorney to sell, assign or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 182. Definition of person appearing to be the owner of certificate.

The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 183. Other definitions.

1. In this article, unless the context or subject-matter otherwise requires —

"Certificate" means a certificate of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"Delivery" means voluntary transfer of possession from one person to another.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Shares" means a share or shares of stock in a corporation organized under the laws of this state or of another state whose laws are consistent with this act.

"State" includes state, territory, district and insular possession of the United States.

"Transfer" means transfer of legal title.

"Title" means legal title and does not include a merely equitable or beneficial ownership or interest.

"Value" is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for

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money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

2. A thing is done "in good faith" within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 184. Article does not apply to existing certificates.

The provisions of this article apply only to certificates issued after the taking effect of this article. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

§ 185. Inconsistent legislation repealed.

All acts or parts of acts inconsistent with this article are hereby repealed. (Added by L. 1913, ch. 600, in effect Sept. 1, 1913.)

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ARTICLE 7.

(Entire article added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

BILLS OF LADING.

SECTION 187. Bills governed by this article.
188. Form of bills. Essential terms.
189. Form of bills. What terms may be inserted.
190. Definition of non-negotiable or straight bill.
191. Definition of non-negotiable or order bill.
192. Negotiable bills must not be issued in sets.
193. Duplicate negotiable bills must be so marked.
194. Non-negotiable bills shall be so marked.
195. Insertion of name of person to be notified.
196. Acceptance of bill indicates assent to its terms.
197. Obligation of carrier to deliver.
198. Justification of carrier in delivering.
199. Carrier's liability for misdelivery.
200. Negotiable bills must be cancelled when goods delivered.
201. Negotiable bills must be cancelled or marked when parts of goods delivered.
202. Altered bills.
203. Lost or destroyed bills.
204. Effect of duplicate bills.
205. Carrier cannot set up title in himself.
206. Interpleader of adverse claimants.
207. Carrier has reasonable time to determine validity of claims.
208. Adverse title is no defense, except as above provided.
209. Liability for non-receipt or misdescription of goods.
210. Attachment or levy upon goods for which a negotiable bill has been issued.
211. Creditor's remedies to reach negotiable bills.
212. Negotiable bill must state charges for which lien is claimed.
213. Effect of sale.
214. Negotiation of negotiable bills by delivery.
215. Negotiation of negotiable bills by indorsement.
216. Transfer of bills.
217. Who may negotiate a bill.
218. Rights of person to whom a bill has been negotiated.
219. Rights of person to whom a bill has been transferred.
220. Transfer of negotiable bill without indorsement.
221. Warranties on sale of bill.
222. Indorser not a guarantor.
223. No warranty implied from accepting payment of a debt.

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SECTION 224. When negotiation not impaired by fraud, accident, mistake, duress or conversion.
225. Subsequent negotiation.
226. Form of the bill as indicating rights of buyer and seller.
227. Demand, presentation or sight draft must be paid, but draft on more than three days' time merely accepted before buyer is entitled to the accompanying bill.
228. Negotiation defeats vendor's lien.
229. When rights and remedies under mortgages and liens are not limited.
230. Issue of bill for goods not received.
231. Issue of bill containing false statement.
232. Issue of duplicate bills not so marked.
233. Negotiation of bill for mortgaged goods.
234. Negotiation of bill when goods are not in carriers possession.
235. Inducing carrier to issue bill when goods have not been received.
236. Issue of non-negotiable bill not so marked.
237. Rule for cases not provided for in this article.
238. Interpretation shall give effect to purpose of uniformity.
239. Definitions.
240. Article does not apply to existing bills.
241. Inconsistent legislation repealed.

§ 187. Bills governed by this article.

Bills of lading issued by any common carrier shall be governed by this article. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 188. Form of bills. Essential terms.

Every bill must embody within its written or printed terms —

(a) The date of its issue,

(b) The name of the person from whom the goods have been received,

(c) The place where the goods have been received,

(d) The place to which the goods are to be transported,

(e) A statement whether the goods received will be delivered to a specified person, or to the order of a specified person,

(f) A description of the goods or of the packages containing them, which may, however, be in such general terms as are referred to in section twenty-three, and

(g) The signature of the carrier.

A negotiable bill shall have the words "order of" printed thereon immediately before the name of the person upon whose order the goods received are deliverable.

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A carrier shall be liable to any person injured thereby for the damage caused by the omission from negotiable bill of any of the provisions required in this section. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 189. Form of bills. What terms may be inserted.

A carrier may insert in a bill, issued by him, any other terms and conditions, provided that such terms and conditions shall not —

(a) Be contrary to law or public policy, or

(b) In any wise impair his obligation to exercise at least that degree of care in the transportation and safe-keeping of the goods entrusted to him which a reasonably careful man would exercise in regard to similar goods of his own. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 190. Definition of non-negotiable or straight bill.

A bill in which it is stated that the goods are consigned or destined to a specified person, is a non-negotiable or straight bill. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 191. Definition of negotiable or order bill.

A bill in which it is stated that the goods are consigned or destined to the order of any person named in such bill is a negotiable or order bill.

Any provision in such bill that it is non-negotiable shall not affect its negotiability within the meaning of this act. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 192. Negotiable bills must not be issued in sets.

Negotiable bills issued in this state for the transportation of goods to any place in the United States on the continent of North America, except Alaska, shall not be issued in parts or sets.

If so issued the carrier issuing them shall be liable for failure to deliver the goods described therein to any one who purchases a part for value in good faith, even though the purchase be after the delivery of goods by the carrier to a holder of one of the other parts. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 193. Duplicate negotiable bills must be so marked.

When more than one negotiable bill is issued in this state for the same goods to be transported to any place in the United States on the continent of North America, except Alaska, the word "duplicate" or some other word or words indicating that the document

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is not an original bill shall be placed plainly upon the face of every such bill, except the one first issued. A carrier shall be liable for the damage caused by his failure so to do to any one who has purchased the bill for value in good faith as an original, even though the purchase be after the delivery of the goods by the carrier to the holder of the original bill. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 194. Non-negotiable bills shall be so marked.

A non-negotiable bill shall have placed plainly upon its face by the carrier issuing it "non-negotiable" or "not negotiable."

This section shall not apply, however, to memoranda, or acknowledgments of an informal character. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 195. Insertion of name of person to be notified.

The insertion in a negotiable bill of the name of a person to be notified of the arrival of the goods shall not limit the negotiability of the bill, or constitute notice to a purchaser thereof of any rights or equities of such person in the goods. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 196. Acceptance of bill indicates assent to its terms.

Except as otherwise provided in this article, where a consignor receives a bill and makes no objection to its terms or conditions at the time he receives it, neither the consignor nor any person who accepts delivery of the goods, nor any person who seeks to enforce any provision of the bill, shall be allowed to deny that he is bound by such terms and conditions, so far as they are not contrary to law or public policy. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 197. Obligation of carrier to deliver.

A carrier, in the absence of some lawful excuse, is bound to deliver goods upon a demand made either by the consignee named in the bill for the goods, or if the bill is negotiable, by the holder thereof, if such demand is accompanied by —

*(a) An offer in good faith to satisfy the carrier's lawful lien bill which was issued for the goods, if the bill is negotiable, and upon the goods,

*(b) An offer in good faith to surrender, properly indorsed, the

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(c) A readiness and willingness to sign, when the goods are delivered, an acknowledgment that they have been delivered, if such signature is requested by the carrier.

In case the carrier refuses or fails to deliver the goods in compliance with a demand by the consignee or holder so accompanied, the burden shall be upon the carrier to establish the existence of a lawful excuse for such refusal or failure. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 198. Justification of carrier in delivering.

A carrier is justfied, subject to the provisions of the three following sections, in delivering goods to one who is

(a) A person lawfully entitled to the possession of the goods, or

(b) The consignee named in a non-negotiable bill for the goods, or goods, or

(c) A person in possession of a negotiable bill for the goods by the terms of which the goods are deliverable to his order, or which has been indorsed to him or in blank by the consignee or by the mediate or immediate indorsee of the consignee. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 199. Carrier's liability for misdelivery.

Where a carrier delivers goods to one who is not lawfully entitled to the possession of them, the carrier shall be liable to any one having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of the preceding section; and, though he delivered the goods as authorized by either of said subdivisions, he shall be so liable if prior to such delivery he —

(a) Had been requested, by or on behalf of a person having a right of property or possession in the goods, not to make such delivery, or

(b) Had information at the time of the delivery that it was to a person not lawfully entitled to the possession of the goods.

A request or information to be effective within the meaning of this section must be given to an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a request or information, and must be given in time to enable the officer or agent to whom it is given, acting with reasonable diligence, to stop delivery of the goods. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

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§ 200. Negotiable bills must be cancelled when goods delivered.

Except as provided in section two hundred and thirteen, and except when compelled by legal process, if a carrier deliver goods for which a negotiable bill had been issued, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the bill, such carrier shall be liable for failure to deliver the goods to any one who for value and in good faith purchases such bill, whether such purchaser acquired title to the bill before or after the delivery of the goods by the carrier, and notwithstanding delivery was made to the person entitled thereto. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 201. Negotiable bills must be cancelled or marked when parts of goods delivered.

Except as provided in section two hundred and thirteen, and except when compelled by legal process, if a carrier delivers part of the goods for which a negotiable bill had been issued and fails either —

(a) To take up and cancel the bill, or

(b) To place plainly upon it a statement that a portion of the goods has been delivered, with a description, which may be in general terms, either of the goods or packages that have been so delivered or of the goods or packages which still remain in the carrier's possession, he shall be liable for failure to deliver all the goods specified in the bill, to any one who for value and in good faith purchases it, whether such purchaser acquired title to it before or after the delivery of any portion of the goods by the carrier, and notwithstanding such delivery was made to the person entitled thereto. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 202. Altered bills.

Any alteration, addition or erasure in a bill after its issue without authority from the carrier issuing the same either in writing or noted on the bill shall be void, whatever be the nature and purpose of the change, and the bill shall be enforceable according to its original tenor. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 203. Lost or destroyed bills.

Where a negotiable bill has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving

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of a bond with sufficient surety to be approved by the court to protect the carrier or any person injured by such delivery from any liability or loss, incurred by reason of the original bill remaining outstanding. The court may also in its discretion order the payment of the carrier's reasonable costs and counsel fees.

The delivery of goods under an order of the court as provided in this section, shall not relieve the carrier from liability to a person to whom the negotiable bill has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 204. Effect of duplicate bills.

A bill upon the face of which the word "duplicate" or some other word or words indicating that the document is not an original bill is placed plainly shall impose upon the carrier issuing the same the liability of one who represents and warrants that such bill is an accurate copy of an original bill properly issued, but no other liability. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 205. Carrier cannot set up title in himself.

No title to goods or right to their possession, asserted by a carrier for his own benefit, shall excuse him from liability for refusing to deliver the goods according to the terms of a bill issued for them, unless such title or right is derived directly or indirectly from a transfer made by the consignor or consignee after the shipment, or from the carrier's lien. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 206. Interpleader of adverse claimants.

If more than one person claims the title or possession of goods, the carrier may require all known claimants to interplead, either as a defense to an action brought against him for non-delivery of the goods, or as an original suit, whichever is appropriate. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 207. Carrier has reasonable time to determine validity of claims.

If some one other than the consignee or person in possession of the bill, has a claim to the title or possession of the goods, and the carrier has information of such claim, the carrier shall be excused from liability for refusing to deliver the goods either to the consignee or person in possession of the bill, or to the adverse claimant, until the carrier has had a reasonable time to ascertain

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the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 208. Adverse title is no defense, except as above provided.

Except as provided in the two preceding sections and in section twelve, no right or title of a third person unless enforced by legal process shall be a defense to an action brought by the consignee of a nonnegotiable bill or by the holder of a negotiable bill against the carrier for failure to deliver the goods on demand. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 209. Liability for nonreceipt or misdescription of goods.

If a bill of lading has been issued by a carrier or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of bills of lading, the carrier shall be liable to

(a) The consignee named in a nonnegotiable bill, or

(b) The holder of a negotiable bill,

Who has given value in good faith relying upon the description therein of the goods, for damages caused by the nonreceipt by the carrier or a connecting carrier of all or part of the goods or their failure to correspond with the description thereof in the bill at the time of its issue.

If, however, the goods are described in a bill merely by a statement of marks or labels upon them or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind or quantity, or in a certain condition, or it is stated in the bill that packages are said to contain goods of a certain kind or quantity or in a certain condition, or that the contents or condition of the contents of packages are unknown, or words of like purport are contained in the bill, such statements, if true, shall not make liable the carrier issuing the bill, although the goods are not of the kind or quantity or in the condition which the marks or labels upon them indicate, or of the kind or quantity or in the condition they were said to be by the consignor. The carrier may, also, by inserting in the bill the words "shipper's load and count" or other words of like purport indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by the improper loading or by the nonreceipt or by the misdescription of the goods described in the bill. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

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§ 210. Attachment or levy upon goods for which a negotiable bill has been issued.

If goods are delivered to a carrier by the owner or by a person whose act in conveying the title to them to a purchaser for value in good faith would bind the owner and a negotiable bill is issued for them, they cannot thereafter, while in the possession of the carrier, be attached by garnishment or otherwise, or be levied upon under an execution, unless the bill be first surrendered to the carrier or its negotiation enjoined. The carrier shall in no such case be compelled to deliver the actual possession of the goods until the bill is surrendered to him or impounded by the court. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 211. Creditor's remedies to reach negotiable bills.

A creditor whose debtor is the owner of a negotiable bill shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such bill, or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which cannot readily be attached or levied upon by ordinary legal process. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 212. Negotiable bill must state charges for which lien is claimed.

If a negotiable bill is issued the carrier shall have no lien on the goods therein mentioned, except for charges on those goods for freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation subsequent to the date of the bill, unless the bill expressly enumerates other charges for which a lien is claimed. In such case there shall also be a lien for the charges enumerated so far as they are allowed by law and the contract between the consignor and the carrier. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 213. Effect of sale.

After goods have been lawfully sold to satisfy a carrier's lien, or because they have not been claimed, or because they are perishable or hazardous, the carrier shall not thereafter be liable for failure to deliver the goods to the consignee or owner of the goods, or to a holder of the bill given for the goods when they were shipped, even if such bill be negotiable. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

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§ 214. Negotiation of negotiable bills by delivery.

A negotiable bill may be negotiated by delivery where, by the terms of the bill, the carrier undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the bill has indorsed it in blank. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 215. Negotiation of negotiable bills by indorsement.

A negotiable bill may be negotiated by the indorsement of the person to whose order the goods are deliverable by the tenor of the bill. Such indorsement may be in blank or to a specified person. If indorsed to a specified person, it may be negotiated again by the indorsement of such person in blank or to another specified person. Subsequent negotiation may be made in like manner. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 216. Transfer of bills.

A bill may be transferred by the holder by delivery, accompanied with an agreement, express or implied, to transfer the title to the bill or to the goods represented thereby.

A nonnegotiable bill cannot be negotiated, and the indorsement of such a bill gives the transferee no additional right. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 217. Who may negotiate a bill.

A negotiable bill may be negotiated by any person in possession of the same, however such possession may have been acquired if, by the terms of the bill, the carrier undertakes to deliver the goods to the order of such person, or if at the time of negotiation the bill is in such form that it may be negotiated by delivery. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 218. Rights of person to whom a bill has been negotiated.

A person to whom a negotiable bill has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the bill to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the consignee and consignor had or had power to convey to a purchaser in good faith for value, and

(b) The direct obligation of the carrier to hold possession of the goods for him according to the terms of the bill as fully as if the carrier had contracted directly with him. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

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§ 219. Rights of person to whom a bill has been transferred.

A person to whom a bill has been transferred but not negotiated acquires thereby as against the transferrer, the title to the goods, subject to the terms of any agreement with the transferrer. If the bill is nonnegotiable, such person also acquires the right to notify the carrier of the transfer to him of such bill, and thereby to become the direct obligee of whatever obligations the carrier owed to the transferrer of the bill immediately before the notification.

Prior to the notification of the carrier by the transferrer or transferee of a nonnegotiable bill, the title of the transferee to the goods and the right to acquire the obligation of the carrier may be defeated by garnishment or by attachment or execution upon the goods by a creditor of the transferrer, or by a notification to the carrier by the transferrer or a subsequent purchaser from the transferrer of a subsequent sale of the goods by the transferrer.

A carrier has not received notification within the meaning of this section unless an officer or agent of the carrier, the actual or apparent scope of whose duties includes action upon such a notification, has been notified; and no notification shall be effective until the officer or agent to whom it is given has had time with the exercise of reasonable diligence to communicate with the agent or agents having actual possession or control of the goods. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 220. Transfer of negotiable bill without indorsement.

Where a negotiable bill is transferred for value by delivery, and the indorsement of the transferrer is essential for negotiation, the transferee acquires a right against the transferrer to compel him to indorse the bill, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 221. Warranties on sale of bill.

A person who negotiates or transfers for value a bill by indorsement or delivery, including one who assigns for value a claim secured by a bill, unless a contrary intention appears, warrants:

(a) That the bill is genuine,

(b) That he has a legal right to transfer it,

(c) That he has knowledge of no fact which would impair the validity or worth of the bill, and

(d) That he has a right to transfer the title to the goods, and

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that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a bill the goods represented thereby.

In the case of an assignment of a claim secured by a bill, the liability of the assignor shall not exceed the amount of the claim. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 222. Indorser not a guarantor.

The indorsement of a bill shall not make the indorser liable for any failure on the part of the carrier or previous indorsers of the bill to fulfill their respective obligations. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 223. No warranty implied from accepting payment of a debt.

A mortgagee or pledgee, or other holder of a bill for security who in good faith demands or receives payment of the debt for which such bill is security, whether from a party to a draft drawn for such debt or from any other person, shall not be deemed by so doing to represent or to warrant the genuineness of such bill or the quantity or quality of the goods therein described. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 224. When negotiation not impaired by fraud, accident, mistake, duress or conversion.

The validity of the negotiation of a bill is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the bill was deprived of the possession of the same by fraud, accident, mistake, duress or conversion, if the person to whom the bill was negotiated, or a person to whom the bill was subsequently negotiated, gave value therefor, in good faith, without notice of the breach of duty, or fraud, accident, mistake, duress or conversion. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 225. Subsequent negotiation.

Where a person having sold, mortgaged, or pledged goods which are in a carrier's possession and for which a negotiable bill has been issued, or having sold, mortgaged, or pledged the negotiable bill representing such goods, continues in possession of the negotiable bill, the subsequent negotiation thereof by that person under any sale, pledge, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous

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sale, shall have the same effect as if the first purchaser of the goods or bill had expressly authorized the subsequent negotiation. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 226. Form of the bill as indicating rights of buyer and seller.

Where goods are shipped by the consignor in accordance with a contract or order for their purchase, the form in which the bill is taken by the consignor shall indicate the transfer or retention of the property or right to the possession of the goods as follows:

(a) Where by the bill the goods are deliverable to the buyer or to his agent, or to the order of the buyer or of his agent, the consignor thereby transfers the property in the goods to the buyer.

(b) Where by the bill the goods are deliverable to the seller or to his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill, the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

(c) Where by the bill goods are deliverable to the order of the buyer or of his agent, but possession of the bill is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods, as against the buyer.

(d) Where the seller draws on the buyer for the price and transmits the draft and bill together to the buyer to secure acceptance or payment of the draft, the buyer is bound to return the bill if he does not honor the draft, and if he wrongfully retains the bill he acquires no added right thereby. If, however, the bill provides that the goods are deliverable to the buyer, or to the order of the buyer, or is indorsed in blank or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill or goods from the buyer, shall obtain the title to the goods, although the draft has not been honored, if such purchaser has received delivery of the bill indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 227. Demand, presentation or sight draft must be paid, but draft on more than three days' time merely accepted before buyer is entitled to the accompanying bill.

Where the seller of goods draws on the buyer for the price of the goods and transmits the draft and a bill of lading for the goods either directly to the buyer or through a bank or other agency,

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unless a different intention on the part of the seller appears, the buyer and all other parties interested shall be justified in assuming:

(a) If the draft is by its terms or legal effect payable on demand or presentation or at sight, or not more than three days thereafter (whether such three days be termed days of grace or not), that the seller intended to require payment of the draft before the buyer should be entitled to receive or retain the bill.

(b) If the draft is by its terms payable on time, extending beyond three days after demand, presentation or sight (whether such three days be termed days of grace or not), that the seller intended to require acceptance, but not payment of the draft before the buyer should be entitled to receive or retain the bill.

The provisions of this section are applicable whether by the terms of the bill the goods are consigned to the seller, or to his order, or to the buyer, or to his order, or to a third person, or to his order. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 228. Negotiation defeats vendor's lien.

Where a negotiable bill has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such bill has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier who issued such bill of the seller's claim to a lien or right of stoppage in transitu. Nor shall the carrier be obliged to deliver or justified in delivering the goods to an unpaid seller unless such bill is first surrendered for cancellation. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 229. When rights and remedies under mortgages and liens are not limited.

Except as provided in section two hundred and twenty-eight, nothing in this article shall limit the rights and remedies of a mortgagee or lienholder whose mortgage or lien on goods would be valid, apart from this article, as against one who for value and in good faith purchased from the owner, immediately prior to the time of their delivery to the carrier, the goods which are subject to the mortgage or lien and obtained possession of them. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 230. Issue of bill for goods not received.

Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill knowing that all or any part of the goods for which such bill is issued have not been received

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by such carrier, or by an agent of such carrier, or by a connecting carrier, or are not under the carrier's control at the time of issuing such bill, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 231. Issue of bill containing false statement.

Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a bill for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 232. Issue of duplicate bills not so marked.

Any officer, agent, or servant of a carrier, who with intent to defraud issues or aids in issuing a duplicate or additional negotiable bill for goods in violation of the provisions of *section seven, knowing that a former negotiable bill for the same goods or any part of them is outstanding and uncanceled, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 233. Negotiation of bill for mortgaged goods.

Any person who ships goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable bill which he afterward negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding one year, or by a fine not exceeding one thousand dollars, or by both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 234. Negotiation of bill when goods are not in carrier's possession.

Any person who with intent to deceive negotiates or transfers for value a bill knowing that any or all of the goods which by the terms of such bill appear to have been received for transportation by the carrier which issued the bill, are not in the possession or control of such carrier, or of a connecting carrier, without dis-

* So in original.

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closing this fact, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 235. Inducing carrier to issue bill when goods have not been received.

Any person who with intent to defraud secures the issue by a carrier of a bill knowing that at the time of such issue, any or all of the goods described in such bill as received for transportation have not been received by such carrier, or an agent of such carrier or a connecting carrier, or are not under the carrier's control, by inducing an officer, agent, or servant of such carrier falsely to believe that such goods have been received by such carrier, or are under its control, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 236. Issue of non-negotiable bill not so marked.

Any person who with intent to defraud issues or aids in issuing a nonnegotiable bill without the words "not negotiable" placed plainly upon the face thereof, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment not exceeding five years, or by a fine not exceeding five thousand dollars, or by both. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 237. Rule for cases not provided for in this article.

In any case not provided for in this article, the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, accident, mistake, bankruptcy, or other invalidating cause, shall govern. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 238. Interpretation shall give effect to purpose of uniformity.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

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§ 239. Definitions.

(1) In this article, unless the context or subject-matter otherwise requires—

"Action" includes counterclaim, set-off, and suit in equity.

"Bill" means bill of lading.

"Consignee" means the person named in the bill as the person to whom delivery of the goods is to be made.

"Consignor" means the person named in the bill as the person from whom the goods have been received for shipment.

"Goods" means merchandise or chattels in course of transportation, or which have been or are about to be transported.

"Holder" of a bill means a person who has both actual possession of such bill and a right of property therein.

"Order" means an order by indorsement on the bill.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee and to take as pledgee.

"Purchaser" includes mortgagee and pledgee.

(2) A thing is done "in good faith," within the meaning of this article, when it is in fact done honestly, whether it be done negligently or not. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 240. Article does not apply to existing bills.

The provisions of this article do not apply to bills made and delivered prior to the taking effect thereof. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

§ 241. Inconsistent legislation repealed.

All acts or parts of acts inconsistent with this article are hereby repealed. (Added by L. 1911, ch. 248, in effect Sept. 1, 1911.)

ARTICLE 7A.

(Article added by L. 1920, ch. 934, in effect April 15, 1921.)

SECTION 250. Exemption of exhibits at international exhibitions.

§ 250. Exemption of exhibits at international exhibitions.

No process of attachment, execution, sequestration, replevin, distress or any kind of seizure shall be served or levied upon articles, goods, wares, merchandise or property of any description while the same is enroute to or from, or while on exhibition or deposited by exhibitors at any international exhibition held under the auspices or supervision of the United States, within any city or county of this state, nor shall such property be subject to attachment, seizure, levy or sale, for any cause whatever, in the hands of the authorities of such exhibition or otherwise. (Added by L. 1920, ch. 934, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1404-a.

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INDEX TO PERSONAL PROPERTY LAW.

(REFERENCE IS MADE TO SECTIONS.)

SECTION

ACCEPTANCE OF GOODS SOLD:
- duty of buyer to accept 122
- what constitutes 129
- does not bar action for damages 130
- buyer not bound to return unaccepted goods 131
- liability of buyer for failure to 132

ACCUMULATION:
- validity of directions for accumulation of income 16
- anticipation of directed accumulation 17
- of income of property conveyed to colleges, etc 16

ADMINISTRATOR:
- when may disaffirm acts of predecessors 19
- transfers of goods in bulk by 44

AGENTS: *See Factors.*

AGREEMENTS: *See Contracts.*

ALIENATION:
- suspension of power of 11
- when income of trust fund is not alienable 15

ANTICIPATION:
- of directed accumulation 17

ASSIGNEE:
- may disaffirm acts of assignor, when 19
- transfers of goods in bulk by 44

ASSIGNMENT:
- what claims or demands may be assigned 41

ATTORNEY GENERAL:
- to represent beneficiaries of gifts and bequests for charitable purposes 12

Digitized by Google

SECTION

AUCTIONEERS:
sales by 31, 102
requisites of memorandum by 31

BANK:
purchase and sale of securities issued by, regulated 33

BARGAIN AND SALE:
oral contracts of, when void 31
of stocks, securities of United States, State, Municipal or other corporations 33

BENEFICIARIES:
for charitable purposes 12, 14
when income of trust fund is not alienable 15

BENEVOLENT USES:
gifts and bequests of personal property for 12
trusts for care of cemetery lots, etc. 13-a

BEQUESTS:
of personal property for charitable purposes 12
for certain educational and other charitable uses authorized 13
in trust for care of cemetery lots, etc. 13-a

BILLS OF LADING:
altered bills 202
acceptance of bill indicates assent to its terms 196
attachment of goods for which a negotiable bill has been issued 210
carrier, adverse title when no defense 208
cannot set up title as excuse for non-delivery 205
effect of sale of goods by 213
justification of in delivering 198
liability, for delivery without cancelling bill of lading 200
failure to mark duplicate negotiable bills 193
misdelivery 199
non-receipt or misdescription of goods 209
issuing negotiable bills in sets 192
bills for goods not received 230
bills containing false statement 231
duplicate bills not so marked 232
may require adverse claimants of goods to interplead 206
obligation of to deliver 197
reasonable time to determine validity of adverse claims to goods. 207
creditor's remedies to reach negotiable bills 211
definitions, "action" 238
"Bill" 239
"Consignee" 239
"Consignor" 239
"Goods" 239
"Holder" 239

Digitized by Google

SECTION

non-negotiable or straight bill 190
negotiable or order bill 191
"Order" 239
"Owner" 239
"Person" 239
to "purchase" 239
"Purchase" 239
"in good faith" 239
duplicate bills, effect of upon liability of carrier 204
must be so marked 193, 232
form of bills, essential terms 188
as indicating rights of buyer and seller 226
garnishment of goods for which a negotiable bill has been issued . . . 210
inconsistent legislation repealed 241
nterpretation of statute. 238
ndorser not guarantor. 222
interpleader of adverse claimants 206
ssue of bills, for goods not received 230
containing false statement 231
duplicate bills not so marked 232
inducing carrier to issue when goods have not been received. 235
non-negotiable bill, not so marked 236
law applicable to cases not provided for by statute 236
levy upon goods for which negotiable bill has been issued 210
liens, vendor's defeated by negotiation 228
rights of lien holders 229
lost or destroyed bills, when court may order delivery 202
mortgages, rights and remedies of mortgagees 229
negotiable bills, creditor's remedies to reach 211
definition 191
duplicates must be so marked 193
insertion of name of person to be notified 195
must not be issued in sets 192
must be cancelled when goods delivered 200
when parts of goods delivered 201
must state charges for which lien is claimed 212
negotiation by delivery 214
by indorsement 215
transfer without indorsement 220
negotiation of bills, by delivery 214
by indorsement 215
defeats vendor's lien 228
for goods covered by mortgage or lien 233
rights of persons to whom a bill has been negotiated 218
subsequent negotiation, effect of 225
when not impaired by fraud, accident, mistake, duress or conversion 217
when goods are not in carriers possession 234

Digitized by Google

who may negotiate a bill 217
non-negotiable bills, definition 190
cannot be negotiated 216
shall be so marked 194, 236
payment, by draft 227
penalty, for issuing non-negotiable bill not so marked 236
for inducing carrier to issue bill when goods have not been received 235
for negotiation of bill when goods are not in carriers possession. 234
for negotiation of bill for mortgaged goods 233
for issuing duplicate bills not so marked 232
for issuing bill containing false statement 231
for issuing bill for goods not received 230
repeal of inconsistent legislation 241
statute does not apply to existing bills 240
stoppage in transitu, right of defeated by negotiation 228
transfer of bills 216
rights of transferee 219
of negotiable bill without indorsement 220
sale of bills, warranties on 221
sale of goods by carrier, effect of 213
warranties, on sale or transfer of bill 221
not implied from accepting payment of debt 223
when governed by statute 187

BOARDS OF TRADE:
gifts to 14

CARRIER:
when adverse title no defense to action on bill of lading 208
cannot set up title as excuse for non-delivery 205
effect of sale of goods by 213
justification of in delivering 198
liability for delivery without cancelling bill of lading 200
failure to mark duplicate negotiable bills 193
misdelivery 199
issuing negotiable bills in sets 192
bills for goods not received 230
bills containing false statement 231
duplicate bills not so marked 232
may require adverse claimants of goods to interplead 206
obligation of to deliver 197
reasonable time to determine validity of adverse claim to goods 207

CEMETERY LOTS:
trusts for care of 13-a

CHAMBERS OF COMMERCE:
gifts to 14

CHARITABLE USES:
gifts and bequests of personal property for charitable purposes 12
disposition of surplus 12
certain charitable uses authorized 13
trusts for care of cemetery lots, etc 13-a
certain gifts for charitable uses regulated 14
accumulations of income for 15

Digitized by Google

SECTION

CITIES:
gifts and bequests to, for educational and other purposes 13
accumulation of income by, for educational uses 16

CLAIMS:
what claims or demands may be transferred 41

COLLEGES:
gifts and bequests to 13
accumulation of income for benefit of 16

COMMON CARRIERS: *See Factors; Carriers.*

CONDITION:
in sale of goods 92

CONDITIONAL SALES:
definitions 60
of railroad equipment and rolling stock 61
conditions and reservations in contracts for sale of goods and chattels 62
where contract to be filed 63
indorsement, entry, refiling and discharge of conditional contracts ... 64
discharge of lien attached to real property 64-a
sale of property retaken by vendor 65
notice of sale 66
disposition of proceeds 67

CONSIDERATION:
validity of certain agreements made without 33

CONTINGENT INTERESTS:
rules regulating 11

CONTRACTS: *See Conditional Sales.*
what, to be in writing 31
not to be performed in one year 31
what oral, void 31
collateral, to answer for debt, default or miscarriage of another 31
in consideration of marriage 31
assigning or conveying trusts 31
subsequent or new promise to renew a debt discharged in bankruptcy 31
to bargain and sell, when void 31
for purchase and sale or transfer of United States, State, Municipal and corporate securities, regulated 33

CONVEYANCES: *See Transfers.*

CORPORATIONS: *See Stock Transfers.*
gifts and bequests to unincorporated colleges and other literary unincorporated institutions 16
purchase and sale of securities of, regulated 33

CREDITORS:
trustees of, may disaffirm acts in fraud of 19
transfers in trust for transferrer, void as to 34
transfers and charges with intent to defraud 35
transfer of goods in bulk, when void as to 44

Digitized by Google

SECTION

CREMATORIES:
gifts to 14

DECEDENT ESTATES:
transfers and mortgages of interest in, to be in writing and recorded 32

DEFINITIONS:
of "income of personal property" 10
of term "transfer" 30
of term "conditional vendor" 60
of term "conditional vendee" 60

DELIVERY OF GOODS SOLD:
duty of seller to deliver 122
and payment are concurrent conditions 123
place, time and manner of 124
of wrong quantity 125
in installments 126
to carrier on behalf of buyer 127
action for failure to deliver 148

DESTRUCTION: *See Risk of Loss.*
of goods sold 88
of goods contracted to be sold 89

DISAFFIRMANCE:
when executors, administrators, receivers, assignees and trustees may make, of their predecessor's acts 19

DOCUMENTS OF TITLE:
definition of 108
negotiation of, by delivery 109
by indorsement 110
when marked "non-negotiable" 111
transfer of non-negotiable 112
transfer of, without indorsement 116
who may negotiate 113
rights of person to whom negotiated 114
rights of person to whom transferred 115
warranties on sale of 116
warranties on sale of 117
liability of indorser of 118
validity of negotiation of 119
attachment or levy upon goods for which document has been issued. 120
creditor's remedies to reach 121

EDUCATIONAL USES:
gifts and bequests of personal property for 12
certain educational uses authorized 13

EXHIBITS:
at international exhibitions, exemption 250

Digitized by Google

SECTION

certain gifts for educational uses regulated 14
validity of directions for accumulation of income for 16

EXAMINATION OF GOODS:
right of buyer to examine goods 128

EXECUTORS:
when executors may disaffirm predecessor's acts 19
transfers of goods in bulk by 44

EXECUTORY INTERESTS:
rules regarding creation of 11

FACTORS:
when deemed true owner of merchandise as to persons contracting with 43
rights of persons contracting with 43
rights of true owner 43
rights of common carrier, warehouseman, etc. 43

FRAUDULENT TRANSFERS:
to hinder, delay or defraud creditors 35
fraudulent intent, a question of fact 37
transfers or charges without consideration 38
void as to successors of creditors and purchasers 39
bona fide purchasers protected 40
transfer of goods in bulk 44
notice of liens upon merchandise or the proceeds thereof to secure loans or advances 45

FUTURE INTERESTS:
rules regulating 11

GIFTS:
of personal property for charitable purposes 12
disposition of surplus 12
for certain educational and other charitable uses authorized 13
in trust for care of cemetery lots, etc 13-a
certain gifts for charitable, educational and other uses regulated 14

INCOME:
of personal property, defined 10
of trust fund not alienable 15

INCOMPETENT:
compromise of controversies where interest affected 24
liability of, for necessaries 83

INCUMBRANCERS:
rights of bona fide 40

INFANT:
compromise of controversies where interest affected 24
liability of, for necessaries 83

INTENT:
transfers and charges with fraudulent intent 35
fraudulent, a question of fact 37

INTERNATIONAL EXHIBITIONS: *See Exhibits.*

Digitized by Google

SECTION

INVESTMENT:
of trust funds 21

LENDERS OF MONEY ON SALARIES:
regulations 42

LIBRARIES:
gifts to 14

LIEN OF SELLER:
on goods sold 134
when right of, may be exercised 135
after part delivery 136
when lost 137

LIEN TO SECURE LOAN OR ADVANCE:
filing and posting notice 45

LITERARY INSTITUTIONS:
certain educational and charitable uses authorized 13

LOANS:
lien upon merchandise to secure loan 45

MARRIAGE:
agreements in consideration of, to be in writing 31

MONEY LENDERS:
lenders of money on salaries to file copies of agreement 42

MORTGAGES:
transfers and mortgages of interests in decedent estates to be in writing and recorded 32

MUSEUMS:
gifts to 14

NECESSARIES:
liability of infant or incompetent for 83
what constitutes 83

ORAL AGREEMENTS: *See Contracts.*

PAYMENT:
duty of buyer to pay 122
delivery and payment are concurrent conditions 123
definition of unpaid seller 133
remedies of unpaid seller 134

PERFORMANCE:
of oral agreememts, effect of 31

PERPETUITIES:
rule against 11
trusts for care of cemetery lots, excepted 13-a

PLEDGORS: *See Factors.*

POWERS:
power to bequeath executed by general provision in will 18

Digitized by Google

SECTION

of alienation, rule regulating suspension of 11
when suspended as to income of trust fund 15

PRICE:
of goods sold, action for 144

PUBLIC OFFICERS:
transfer of goods in bulk by 44

PURCHASERS: *See Sales; Transfers.*
bona fide, protected 40

RAILROADS: *See Conditional Sales.*

RECEIVERS:
may disaffirm predecessors' acts, when 13
transfers of goods in bulk by 44

RECORDING:
transfers and mortgages of interests in decedent estates to be in writing and recorded 32

RELIGIOUS USES:
gifts and bequests of personal property for 12

RESCISSION:
of sale by seller 146

REVOCATION:
of trusts upon consent of all persons interested 23

RISK OF LOSS: *See Destruction.*
of goods sold 103

SALARIES:
loaning of money on account of 42

SALES: *See Conditional Sales; Transfers; Sales of Goods.*
of securities of United States, State, Municipal or other corporations 33
transfers of goods in bulk 44

SALE OF GOODS:
absolute, contract to sell or a sale may be 82
acceptance of goods:
duty of buyer to accept 122
what constitutes 129
does not bar action for damages 130
buyer not bound to return unaccepted goods 131
liability of buyer for failure to accept 132
action:
rights may be enforced by 153
for price of goods sold 144
for damages for non-acceptance of goods 145
for converting or detaining goods 147

Digitized by Google

SECTION

for failure to deliver goods 148
specific performance 149
article V not applicable to mortgages 155
not applicable to existing sales or contracts to sell 157
does not repeal uniform warehouse receipt laws 157
at a valuation 92
attachment of goods upon which negotiable document has been issued 120
auction, sale by 102
by one not the owner 104
by one having a validable title 105
by seller in possession of goods already sold 106
rights of creditors of seller 107
capacity to buy and sell 83
conditional, contract to sell may be 82
creditors' remedies to reach negotiable documents 121
definitions:
"Action" 156
"Buyer" 156
"Contract to sell goods" 82
"Defendant" 156
"Deliverable State" 156
"Delivery" 156
"Devisible contract to sell or sale" 156
"Document of title to goods" 156
"Fault" 156
"Fungible goods" 156
"Future goods" 156
"Goods" 156
"In good faith" 156
"Insolvent" 156
"Order" 156
"Person" 156
"Plaintiff" 156
"Property" 156
"Purchaser" 156
"Purchases" 156
"Quality of goods" 156
"Sale" 156
"Sale of Goods" 82
"Seller" 156
"Specific goods" 156
"Unpaid seller" 133
delivery of goods:
duty of seller to deliver 122
and payment are concurrent conditions 123
place, time and manner of 124
of wrong quantity 125
in installments 126
to carrier on behalf of buyer 127

Digitized by Google

SECTION

destruction:
of goods sold 88
of goods contracted to be sold 89
examination of goods:
right of buyer 128
existing goods, sale of 86
form of contract 84
future goods, sale of 86
liability:
of infant of incompetent for necessaries 83
lien of seller 134
when right of may be exercised 135
after part delivery 136
when lien is lost 137
sale of goods subject to 143
negotiable documents of title 108
negotiation by delivery 109
by indorsement 110
when marked "not negotiable" 111
who may negotiate 113
rights of person to whom negotiated 114
rights of person to whom transferred 115
transfer of non-negotiable documents 112
of negotiable documents without indorsement 116
warranty on sale of document 117
liability of indorser of document 118
validity of negotiation 119
attachment of goods 120
creditors' remedies to reach 121
part owners:
may sell interest one to another 82
payment:
duty of buyer to pay for goods 122
delivery and payment are concurrent conditions 123
definition of unpaid seller 133
remedies of unpaid seller 134
price 90
property:
in goods does not pass until they are ascertained 98
in specific goods, passes when parties so intend 99
rules for ascertaining intention 100
reservation when goods are shipped 101
recovery of interest and special damages 151
remedies for breach of warranty 150
rescission of sale by seller 146
reservation of rights when goods are shipped 101
risk of loss of goods sold 103
rule for cases not provided for 154

Digitized by Google

SECTION

Statute of Frauds, relating to sales 85
subject to unperformed condition 92
stoppage in transitu 134, 138
when goods are considered in transit 139
exercising right to stop 140
resale 141
rescission of sale 142
sale of goods subject to 143
undivided shares 87
variation of implied obligations 152

warranty:
express 93
implied warranty of title 84
in sale by description 95
of quality 96
in sale by sample 97
remedies for breach of 150
recovery of interest and special damages 151
variation of implied obligations 152

SAMPLE:
implied warranty in sale by 97

SCHOOLS:
certain gifts and bequests to, authorized 13
accumulation of income for educational uses 16

SPECIFIC PERFORMANCE:
of contract of sale 149

STATE:
purchase and sale of securities of 33

STATUTE OF FRAUDS:
agreements required to be in writing 31, 85

STOCK TRANSFERS IN CORPORATIONS
how title to certificates and shares may be transferred 162
powers of those lacking full legal capacity and of fiduciaries not enlarged 163
corporation not forbidden to treat registered holder as owner 164
title derived from certificate extinguishes title derived from a separate document 165
who may deliver a certificate 166
indorsement effectual in spite of fraud, duress, mistake, revocation, death, incapacity or lack of consideration or authority 167
recission of transfer 168
recission of transfer of certificate does not invalidate subsequent transfer by transferee in possession 169
delivery of unindorsed certificate imposes obligation to indorse 170
ineffectual attempt to transfer amounts to a promise to transfer 171
warranties on sale of certificate 172
no warranty implied from accepting payment of a debt 173
no attachment or levy upon shares unless certificate surrendered or transfer enjoined 174

Digitized by Google

SECTION
creditor's remedies to reach certificate 175
there shall be no lien or restriction unless indicated on certificate... 176
alteration of certificate does not divest title to shares 177
lost or destroyed certificate 178
rule for cases not provided for by this act 179
interpretation shall give effect to purpose of uniformity 180
definition of indorsement 181
definition of person appearing to be the owner of certificate 182
other definitions 183
article does not apply to existing certificate 184
inconsistent legislation repealed 185
STOPPAGE IN TRANSITU:
of goods sold 134, 138
when goods are in transit 139
exercising right to stop 140
resale 141
rescission of sale 142
sale of goods subject to 143
SUPREME COURT:
control over gifts and bequests for charitable purposes 12
when trusts vest in 20
SUSPENSION OF OWNERSHIP:
rule against 11
trusts for care of cemetery lots, excepted 13-a
TRANSFERS: *See Sales; Sales of Goods; Stock Transfers.*
transfers and mortgages of interests in decedent estates to be in writing and recorded 32
definition of 30
in trust for transferrer 34
transfers and purchases with fraudulent intent 35
fraudulent intent, a question of fact 37
transfers or charges without consideration 38
successors to rights of creditors and purchasers 39
bona fide purchasers 40
what claims or demands may be transferred 41
transfer of goods in bulk 44
TRUSTS:
for certain educational and charitable uses authorized 12, 13
for care of cemetery lots, etc 13-a
for benefit of libraries, museums and crematories, etc 14
when income of trust fund is not alienable 15
when trust vests in supreme court 20
transfers in trust for the transferrer 34
revocation of, upon consent of all persons interested 23
TRUSTEES:
of trusts for charitable purposes 12
disaffirmance of fraudulent acts by 19
investment of trust funds 21
commissions of trustees to sell for benefit of creditors 22
TRUSTEES IN BANKRUPTCY:
transfers of goods in bulk by 44
UNDIVIDED SHARES:
of goods may be sold 87
UNITED STATES:
purchase and sale of securities of 33
UNKNOWN PERSONS:
compromise of controversies where interest affected 24
UNPAID SELLER: *See Payment.*
VALUATION:
sale at a 91

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SECTION

VARIATION:
of implied obligations, arising out of sale 152
VENDORS: *See Conditional Sales; Fraudulent Transfers; Sales; Transfers.*
VILLAGES:
gifts and bequests to, for educational and other purposes 13
accumulation of income by, for educational uses 16
WAGES:
loaning of money on account of 42
WAREHOUSE RECEIPT LAW:
not repealed by sales law 158

WARRANTY:
express warranty 93
implied warranties of title 94
in sale by description 95
of quality 96
in sale by sample 97
on sale of document of title 117
remedies for tract of 150

WILL:
bequests of personal property for charitable purposes 12
bequests for certain educational and other charitable uses authorized 13
trusts for care of cemetery lots, etc. 13-a
power to bequeath executed by general provision in will 18

WRITING:
agreements required to be in writing 31
transfers and mortgages of interests in decedent estates to be in writing 32

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REAL PROPERTY LAW.

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CONSOLIDATORS' NOTES TO TEXT OF REAL PROPERTY LAW.

1. Sec. 2. This amendment proposed restores the usage of the Revised Statutes which confined the definition of this section to the matter contained in the first eight articles. Observe that Art. 9 of this chapter (Sec. 240, new Sec. 290) contains its own definitions, slightly at variance with that in Sec. 2. Therefore the definition of Sec. 2 is not, as it now stands, correct.

The "nor" in the second part of the section is not grammatical.

2. Sec. 15. The section should be made more clearly futuritive in operation, as was originally intended by the revisers.

3. Sec. 39. The amendment of this section conforms to the revisers' intention, which failed of expression.

4. Sec. 42. The authors of the General Laws unfortunately changed the Revised Statutes. By their transpositions and omissions of the provisions of the statutes, future estates only were made void when in conflict with the rule. A trust estate, in the case of an executed trust, is always a present estate, and not a future estate, and although it may offend against the spirit of the rule against perpetuities there is no provision now on the statute books avoiding it. Subdivision 2 (old 1 R. S. 723, Sec. 15) controlled it formerly. But the revisers of the General Laws, in their revision of the statutes, failed to incorporate this subdivision. The profession has been anxiously expecting some case which would involve this omission. The courts would possibly rectify it by a violent assumption, deciding that no change in the Revised Statutes was intended.

It is suggested that this omission might be corrected by restoring the provisions of the Revised Statutes and inserting the following:

SUSPENSION OF POWER OF ALIENATION.

"1. Every future estate which shall suspend the absolute power of alienation for a longer period than is prescribed in this article shall be void in its creation. Such power of alienation is suspended, when there are no persons in being, by whom an absolute fee in possession can be conveyed.

"2. The absolute power of alienation, shall not be suspended by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate, except in the single case mentioned in the next subdivision.

"3. A contingent remainder in fee, may be created on a prior remainder

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in fee, to take effect in the event that the persons to whom the first remainder is limited, shall die under the age of twenty-one years, or upon any other contingency, by which the estate of such persons may be determined before they attain their full age.

"4. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority."

5. Sec. 42 The rule against perpetuities, expressed in this section has been lately held, since L. 1903, ch. 701, to have no further application to charitable uses: *Allen* v. *Stevens*, 161 N. Y. 122; *Matter of Griffen*, 167 N. Y. 71, 81. This being so, it should be so plainly stated in a statute consolidating the laws relating to charities. At common law, charitable, or public, uses were not subject to the rule against perpetuities, except as to the time of vesting in possession, which could not be postponed beyond the legal limit. *Marsden on Perpetuities*, 24, 295; *Challis on Real Property*, 157. This was a wise exception recognized in this state, and it should be continued. *Rose* v. *Rose*, 4 Abb. Ct. App. Dec. 108. The phrase "except as to the time of vesting in possession" is the technical one employed, in the law relating to charitable uses, to express that such uses must vest within the time limit prescribed by the rule against perpetuities.

It is suggested that this exception might be stated by inserting the following:

"But this section does not apply to the uses mentioned in sections one hundred and thirteen, one hundred and fourteen and one hundred and fifteen of this chapter, except as to the time of vesting in possession."

6. Sects. 67, 70, 107, 116. These sections require that every person in being, having an estate, vested or contingent, in reversion or remainder, in the real property in question, shall either be served with notice or shall execute a conveyance. These sections cannot, in the minds of experienced conveyancers, be safely applied in the large class of cases in which the remainder goes to the heirs of a living person. In such a case, the heirs, of course, are not ascertainable at the time when the proceeding is taken and may include collateral relatives to the remotest degree. It seems, that in such cases it should be enough to regard the heirs presumptive as representing the remainder. In many cases these useful sections cannot be resorted to owing to the impossibility of bringing in all of the possible heirs of a living person.

The sections should also be made applicable to remainders "which open to let in," even though not classed as contingent remainders.

7. Sec. 91. The language of the Revised Statutes is much more exact. As Sec. 91 now stands, it contains two principal errors: Uses and trusts were sub modo abolished by 1 R. S. 727, Sec. 45. But 1 R. S. 727, Sec. 45, was repealed by L. 1896, Ch. 547, Sec. 300, so that as the law now stands, there is no plain enactment abrogating the old law of uses and trusts, as it stood before 1829. It seems very clear that uses and trusts, except as authorized and modified by our present article on Uses and Trusts, should be directly abolished by a plain enactment, present in point of time, but futuritive in action. There is no need to refer the abolition back to 1829. Uses and trusts, between 1829 and 1896, depend on the Revised Statutes, and even uses executed by that statute are abundantly protected without any special reference in the present "Real Property Law."

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The language of the Revised Statutes, concerning estates and interests in lands, regarded as "legal rights cognizable in the courts of law," should also be restored. The present language of the section seems to imply a class of legal rights not cognizable in the courts, which is impossible, under the established maxim: "ubi jus ibi remedium." Its literal effect is also to abolish equitable rights in real property.

In their desire not to recognize courts of law, as contradistinguished from courts of equity, the late revisers ignored the fact, that the reform of 1846 was the fusion, and not the abolition, of courts of law and courts of equity, and that in this state a legal right is still cognizable in a court of law only. Equitable rights over real property are still recognized and protected. They should not be turned into legal rights as was unintentionally done by the late revisers in this section. Equitable rights are fixed and protected by the Constitution of the State, and the Legislature is powerless to turn them into legal rights without an amendment to the Constitution. The language of the Revised Statutes is, therefore, still relevant to present conditions and should be restored: *Gould* v. *Cayuga County Bank*, 86 N. Y. 75, 83; *Peter* v. *Delaplaine*, 49 N. Y. 362, 370; *Chipman* v. *Montgomery*, 63 N. Y. 221, 230; *Town of Mentz* v. *Cook*, 108 N. Y. 504; *Corscadden* v. *Haswell*, 88 App. Div. 158; *Gilbert* v. *Brunell*, 92 App. Div. 284.

The following is suggested in place of the section now in the statute: "Uses and trusts, except as authorized and modified in this article, are abolished; and every estate and interest in lands, shall be deemed a legal right, cognizable as such in the courts of law, except when otherwise provided in this chapter."

8. Sec. 96. After 1830 and prior to 1893 it is well known that the trustee of a charitable use or trust in this state was only the trustee of a power and the legal title passed to heirs or devisees, subject to the power which overrode the legal estate. The reason for this was, that charitable uses were, after forty-three years of fierce litigation, held to be within the purview of the article of the Revised Statutes relating to uses and trusts, and the section on express trusts did not class charitable uses as express trusts. So they must, where tolerated, be classed as "powers in trust."

Now that charitable uses are again permitted by L. 1893, Ch. 701, repeated in Sec. 113 of this act (which act, the courts also hold, relieves charitable uses from the operation of our rule against perpetuities, except as to the time of vesting in possession) there is no reason why charitable uses and trusts, when to be performed by natural persons, should not be declared to be express trusts, so that the trustee may take and hold the legal title to real property within the limits allowed by law.

These amendments enable the courts to deal with the trustees of charitable uses without the necessity of making the heirs and devisees of the donor, or a person holding the naked title, parties to a judicial proceeding in which they no longer have any interest.

The reform proposed by this amendment is orderly, but in no way affects legal or equitable rights of any person, and there need be no hesitancy on that score in adopting it.

There is now no real difference between the trustees of an express trust and the trustee of a "power in trust," except the sometimes inconvenient one in respect to his legal title.

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This proposed subdivision would obviate this inconvenience:

"5. To execute and perform such charitable, religious, educational, and benevolent uses and trusts as are authorized by law."

9. Sec. 98. The Code of Civil Procedure (Section 1391), as conceded, has put an end to a large "spendthrift trust" in this state. See *King* v. *Irving*, 103 App. Div. 420; *Sloane* v. *Tiffany*, 103 App. Div. 540. The effect of section 1391 of the Code is to permit certain creditors of beneficiaries of trusts created under the third subdivision of Sec. 76 of the old Real Property Law, to have execution on their judgments. So important a reform in our domestic law of trusts deserves to be called to the attention of lawyers and laymen reading the Statute on Uses and Trusts and such a clause might be added to this section. It ought not to be left obscurely contained in a long section of the Code of Civil Procedure.

10. Sec. 100. Section 100 of this chapter as it now stands misses the entire reform of the Revised Statutes. The intention of this section of the Revised Statutes was to abolish "equitable estates," which in the development of jurisprudence had come to resemble legal estates. Thus a beneficiary of a trust might have an equitable fee or an equitable estate tail. If an estate tail, it might be barred by equitable tenants in tail. All equitable estates were susceptible of the same limitations as legal estates. The revisers of the Revised Statutes, with a profound knowledge of the old law, intended to abolish this anomaly of "equitable estates" of trust beneficiaries. The revisers of the Real Property Law, with great infelicity, missed the entire point of this reform. As it now stands Sec. 100 is incorrect, for the beneficiary of a trust never does take a legal estate or interest, and its possible effect is to restore the old law relating to equitable estates, if it is construed strictly. The language of the Revised Statutes should, therefore, be restored.

The following is suggested in place of the present section:

"Sec. 100. TRUSTEES OF EXPRESS TRUST TO HAVE WHOLE ESTATE.

"Every express trust, valid, as such, in its creation, except as herein otherwise provided, shall vest the whole estate in the trustees in law and equity, subject only to the execution of the trust. The persons for whose benefit the trust is created, shall take no estate or interest in the lands but may enforce the performance of the trust in equity."

The final "him" should be "them" as it was in the original section in the Revised Statutes, 1 R. S., 729, Sec. 61.

11. Sec. 103. Section 83 of the "old" Real Property Law was intended by the late revisers as the equivalent of 1 R. S. 730, Sec. 63. They so state. The old section 63 prohibited the alienation of a beneficiary's interest in any trust for the receipt of the rents and profits of land, thus including the third and fourth express trusts. But the present section confines it to the third trust purpose, thus allowing the transfer of accumulations in a way not permitted by the Revised Statutes. It is true that the beneficiary of the fourth trust is necessarily an infant, but if the interest is assignable it could probably be reached and could be bequeathed by the infant after he reaches the age of eighteen. This result was probably overlooked. In any event the Revised Statutes should be restored, as it is more consonant with the scheme of the article on Uses and Trusts.

The following is suggested in place of the present section.

"WHAT TRUST INTERESTED MAY BE ALIENATED. No person beneficially interested in a trust, for the receipt of the rents and profits of lands,

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can assign or in any manner dispose of such interest; but the rights and interest of every person for whose benefit a trust for the payment of a sum in gross is created, are assignable."

12. Sec. 107. See note to Sec. 67.

The following language is suggested for insertion in Sec. 107 after the first sentence:

"But if the remaindermen, upon the determination of the trust, shall be persons the identity of whom cannot be definitely ascertained until the trust shall have determined, the court may, in its discretion, entertain the application upon proof of service of notice thereof upon all persons who shall then be presumptively entitled to the remainder or some interest therein."

For the reasons assigned in note 6 the following language is suggested for insertion at the close of Sec. 107:

"and against all remainderman whose identity cannot be definitely ascertained until the trust shall have determined."

13. Sec. 112. The following subdivisions are suggested for insertion as a part of Sec. 112;

"4. The surrogates' courts in each county shall have the same powers as the Supreme Court, in respect of the resignation, removal, and appointment of trustees, where the trust has been, or shall be, created by last will and testament.

"5. Where title to real property is vested in an executor or administrator as such, the same vests in his successor upon the issuing of letters testamentary or of administration to such successor."

As the surrogate now has, by statute, extensive powers over testamentary trustees, it is highly desirable to make this conformation of the Real Property Law, in order to complete the analogy, and, therefore, to declare that his powers are co-extensive with those of the supreme court in the respects denoted. If this addition is adopted it will be necessary to add to Sec. 182 words indicating that the surrogate may not appoint a person to execute a power in trust conferred by deed.

It has been suggested, that an executor or administrator acquiring lands, for example, by foreclosure of a mortgage, is not the trustee of an express trust within the meaning of Sec. 112, but is trustee of an implied trust which will, as at common law, descend to his heirs, or pass to his devisees upon his death. It is well that this question should be settled by statute in a declaratory form.

14. Sec. 113. Section 93 of the "old" Real Property Law was nothing but a paraphrase of L. 1893, Ch. 701. Instead of such paraphrase it would seem best to re-enact L. 1893, Ch. 701, as amended by L. 1901, Ch. 291, and then to repeal both L. 1893, Ch. 701 and L. 1901, Ch. 291. Otherwise we have two statutes on the statute book, both relating to the same thing and both phrased in slightly different language. By this course, no change whatsoever will be made in the substance of existing law.

15. Sec. 114. The following subdivision is suggested for insertion at the close of Sec. 114:

"V. Every such deed of settlement, grant, or conveyance, shall, in order to entitle it to the benefits of this section of this act, be recorded in the county or counties where the real property is situated."

It seems expedient to give publicity to such charitable gifts as are inter vivos. It conforms to the requirements of L. 1904, Ch. 692. Con-

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veyances not recorded are, of course, void as to bona fide purchasers under a deed first recorded. (Section 241, "old" Real Property Law.) But that section is not always adequate to compel recording in the case of a vested gift or grant to a charitable use, where the donee is in possession.

16. Sec. 116. For the reason assigned in note 6, the following is suggested for insertion between the words "as the court or a justice thereof prescribes" and "The court shall appoint":

"But if the remainderman, upon the determination of a trust shall be persons whose identity cannot be definitely ascertained until the trust shall have determined, the court may in its discretion entertain the application upon proof of service of notice thereof upon all persons who shall then be presumptively entitled to the remainder or some interest therein."

17. Sec. 130. The Revised Statutes abolished powers as then existing (1 R. S. 732, Sec. 73). The Real Property Law repealed 1 R. S. 732, sec. 73. There was then no law abrogating the old law of powers, so that the language of former Sec. 110 is equivocal. Section 110 should not be re-enacted in the language of the Revised Statutes, so as to cure this defect by making the abolition of the old law of powers positive and express, instead of by implication.

18. Sec. 173. As section 173 now stands, it literally requires that the consent of grantor or of a third person be a part of the instrument executing the power. Yet conveyancers commonly are of the opinion that a written consent contained in a separate instrument, if such consent is proved or acknowledged, satisfies the statute. There are no reported cases bearing expressly on this point. But as conveyancers in the city of New York customarily adopt the view denoted, it should be made clear by statute. It is sometimes extremely inconvenient to send a deed in execution of a power to Europe, or elsewhere, in order to have this consent of third persons endorsed thereon. There seems to be no good reason why the consent of third persons to the execution of a power should not be contained in a separate instrument in writing, if such instrument is duly proved or acknowledged. The other course now prescribed by the statute is very inconvenient and its necessity is actually ignored in practice by many conveyancers. This is one of the rare cases where the original provisions of the Revised Statutes relating to real property seem susceptible of improvement.

19. Sec. 182. For the reasons assigned in note 14, the following is suggested for insertion at the close of Sec. 182:

"Excepting that no surrogate shall have authority, power, or jurisdiction to appoint, or designate, a person to execute a power in trust, conferred by deed."

20. Sec. 231. Subdivision 1 of this section is new. It is the remaining unrepealed part of L. 1873, Ch. 583. Both subdivisions came from the same act and belong in the same section.

21. Sec. 240. The language of this section is not disturbed, but the introduction of paragraphs numbered corresponds with the Revised Statutes and makes the sense clearer.

22. Sec. 271, Subd. 3. "Or" changed to "of" to comply with provision in form of mortgage contained in Sec. 273.

23. Sec. 271, Subd. 4. The words "in and" omitted to comply with provisions in form of mortgage contained in Sec. 273 from which quotation here made is taken.

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24. It is highly desirable that a statutory form for a certificate of acknowledgment, by attorneys in fact, should be prescribed, inasmuch as there is considerable difference of opinion in the profession as to the requisites of such certificate. The officer taking such acknowledgment cannot be expected to have any knowledge of the principal in the transaction. He commonly knows only the attorney in fact and need not know the principal. Hence it should be sufficient that he certify the identity of the person making the acknowledgment as attorney in fact. As the attorney is not necessarily described in the instrument of conveyance acknowledged, both the power of attorney and the certificate of acknowledgment should be required to be precise in their description of the attorney so as to distinguish him from persons bearing similar names.

The following form is suggested:

"**Sec. 332.** ATTORNEYS IN FACT AND FORM OF ACKNOWLEDGMENT. Every instrument hereafter executed conferring a power upon any person, as agent or attorney in fact for another, to convey or mortgage real property in this state, or to assign, release or satisfy any lien thereon, shall describe such agent or attorney in fact, stating his occupation, if any, and also his residence or place of business.

"The certificate of acknowledgment of an instrument executed by such agent or attorney in fact shall be substantially in the following form, the blanks being properly filled:

State of .....
County of ..... } ss:

On this .... day of ..... in the year ...., before me personally came ..... to me personally known to be the person described and appointed attorney in fact in and be a certain power of attorney executed by ..... bearing date the .... day of ..... and recorded in the office of the register (or clerk) of the County of ..... on the .... day of ..... (or to be recorded in the office of the .... of the County of ..... simultaneously with the within instrument) and acknowledged to me that he had executed the within (or foregoing) instrument as the act of the said.....

.....,
Signature and office of officer
taking the acknowledgment."

25. Sec. 290. The only change made in this section is to separate the sentences into numbered paragraphs, according to the original of the section. (1 R. S. 736, Sec. 114; 1 R. S. 762, Secs. 36, 37, 38, 39; 1. R. S. 763, Sec. 42.) The late revisers made but one paragraph, thus obscuring the separate elements of the various definitions.

26. Sec. 299. The reference to sec. 262 in the amendment by L. 1903, Ch. 419, was incorrect. Section 261 was the section intended. This is new Sec. 312.

27. Sec. 301. This section of the old Real Property Law is left in the language in which the various amendments to L. 1896, Ch. 547, have put it, except that the indefinite article has been placed before the titles of the various functionaries mentioned, so as to make plain who is intended. In subdivisions 1 and 2, the language is made less obscure by the proposed amendments. The acts amending this section and now embodied in it were not always precisely framed.

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28. Sec. 308. The changes simply conform to the correct official designations at Washington.

29. Sec. 311. The requirements of authentication "by the clerk, register, recorder or prothonotary of the county in which the officer making the original certificate resides" is very troublesome. In some cases, a notary is a state officer. In Massachusetts, for example, a notary is qualified to act in any part of the state. Many, who have their offices in the county of Suffolk (City of Boston), reside in the suburbs in adjoining counties, but they always procure certificates from the Suffolk county clerk. Under this section as it stands, these certificates are not good. Even in cases where the notary resides in Suffolk, the certificate usually does not state that fact and inquiry is necessary.

This section should not be re-enacted without some slight change, curing its obvious defects.

The authentication should be sufficient if made by an officer of the county in which the certificate purports to be made.

Again, as the law now stands there is no provision for an authentication of an acknowledgment by a notary in the District of Columbia. Under Sec. 47, of the General Construction Law, the District is regarded as a state, but there is no secretary of such state, no county clerk, and no court of any county therein. Certificates by the clerk of the supreme court of the District do not comply with the law.

Furthermore, it is often difficult to determine where a certificate of authentication purports to be made by a clerk of a court, whether the court is, or is not, a court of a county. Formerly the law only required that the authenticating officer should be a clerk of a court of record in the proper county. For example, in Virginia, the county courts have been recently abolished. In some cities and towns there are corporation or hustings courts, whose clerks perform the same duties as formerly were performed by the clerks of the county courts. Thus in practice difficult questions arise under this section as it now stands.

All these difficulties can be remedied by amending subdivision 3 so that it shall require the certificate of authentication to be made by "the secretary of state of the state, or the clerk, register, recorder, or prothonotary of a county" (in the state or in the Dominion of Canada, as the case may be), "or by the clerk of any court in such state or dominion having by law a seal." The proposed changes do not alter the law in any material respects and add to, rather than detract from, the security of owners of real property. But the changes do place the section in a practical form.

The following amendment is suggested:

"3. Where made by the officer of a state of the United States or of the Dominion of Canada, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, or by the clerk, register, recorder or prothonotary of [the] *a* county, city or parish in which the [officer making the original certificate resided, when the certificate was made] *certificate purports to be made*, or by the clerk of any court [of that county, city or parish] *in such state or dominion* having by law a seal. All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property heretofore authenticated by any of the officers above referred to are confirmed saving, however, the rights of purchasers in good faith and for a valuable consideration whose conveyance shall have been duly recorded

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before this act shall take effect; this act shall not affect any action or legal proceeding now pending."

30. Former art. 9. Descent of Real Property,

This article has been removed from the Real Property Law and has been placed in the Decedent Estate Law. The same treatment has been made of the statute of distribution in the Code of Civil Procedure which has been placed in the Decedent Estate Law. It has always been confusing to have the statute of decedent in the Real Property Law, and the statute of distribution in the Code of Civil Procedure. The latter does not belong in the Code of Civil Procedure. The Statute, like much of the other material in the Code of Civil Procedure, is substantive in character and should be removed. It is thought that the placing of both the statute of descent and the statute of distribution in the Decedent Estate Law would be the best treatment of the subject.

31. Art. 10. Discharge of Ancient Mortgages.

This article is new. It contains ipsissimis verbis the substance of L. 1862, Ch. 365, as amended by L. 1868, Ch. 798; L. 1873, Ch. 551; L. 1882, Ch. 100; L. 1882, Ch. 278; L. 1884, Ch. 326; L. 1898, Ch. 174; and L. 1901, Ch. 287. Something must be done, in consolidating the statutes, with these acts relating to mortgages and their discharge, and they properly belong in the Real Property Law.

The courts stricken from Subdivision 2 no longer exist.

32. Art. 11. Quieting Title to Real Property.

This article is made up of the provisions of chapter 503 of the Laws of 1890, entitled "An act to quiet the title to real property in certain cases, conveyed pursuant to judicial decree, which decree has been lost or destroyed." This proceeding has never found its way into the Code of Civil Procedure and shows the haphazard manner in which the Code of Civil Procedure has been made up. It is a proceeding quite as important as other proceedings in the Code relating to real property and yet it is found in an independent statute. The fact is, that there are quite as many so-called proceedings out of the Code as in. The proceedings given in this article finds a natural place in the Real Property Law.

33. Sec. 381. This matter has been transferred from former Section 1 to its appropriate place in the chapter in accordance with the arrangement of matter followed in the consolidated laws.

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Table A.

Showing distribution of sections of Former Real Property Law as now found in the Consolidated Real Property Law and Decedent Estate Law.

Former Section Number	Consol. Real Prop. Law Section.
1 pt.	1
1 pt.	2
1 pt.	46
2 pt.	10
3	11
4	12
5	13
6	14
7	15
8	16
9	17
20	30
21	31
22	32
23	33
24	34
25	35
26	36
27	37
28	38
29	39
30	40
31	41
32	42
33	43
34	44
35	45
36	46
37	47
38	48
39	49
40	50
41	51
42	52
43	53
44	54
45	55
46	56
47	57
48	58
49	59
50	60
51	61 pt.
52	62
53	63
54	64
55	65
56	66
57	67
58	68
59	69
60	70
61	71
70	90
71	91
72	92
73	93
74	94
75	95
76	96
77	97
78	98
79	99
80	100
81	101
82	102
83	103 pt.
84	104
85	105 pt.
86	106
87	107
88	108
89	109
90	110
91	111
92	112
93	113 pt.
94	116
110	130
111	131
112	132
113	133

Digitized by Google

Former Section Number	Consol. Real Prop. Law Section.
114	134
115	135
116	136
117	137
118	138
119	139
120	140
121	141
122	142
123	143
124	144
125	145
126	146
127	147
128	148
129	149
130	150
131	151
132	152
133	153
134	154
135	155
136	156
137	157
138	158
139	159
140	160
141	161
142	162
143	163
144	164
145	165
146	166
147	167
148	168
149	169
150	170
151	171
152	172
153	173
154	174
155	175
156	176
157	177
158	178
159	179
160	180
161	181
162	182

Former Section Number	Consol. Real Prop. Law Section.
170	190
171	191
172	192
173	193
174	194
175	195
176	196
177	197
178	198
179	199
180	200
181	201
182	202
183	203
184	204
185	205
186	206
187	207
190	220
191	221
192	222
193	223
194	224
195	225
196	226
197	227
198	228
199	229
200	230
201	231 pt.
202	232
205	240
206	241
207	242
208	243
209	244
210	245
211	246
212	247
213	248
214	249
215	250
216	251
217	252
218	253
219	254
220	255
221	256
222	257

Digitized by Google

Former Section Number	Consol. Real Prop. Law Section.
223	258
224	259
225	260
226	262
227	263
228	264
229	265
230	266
231	267
232	268
233	269
234	270
235	271
236	272
237	273
240	290
241	291 pt.
242	292
243	293
244	294
245	295
246	296
247	297
248	298
249	299
249a	300
250	301
251	302
252	303
253	304
254	305
255	306
256	307
257	308
258	309
259	310
260	311
261	312
262	313
263	314
264	315
265	316
266	317
267	318
268	319
269	320
270	321
270a	322
270b	323
271	324
272	325
273	326
274	327
275	328
276	329
277	330
278	331
280	Decedent Estate L. 80
281	" " 81
282	" " 82
283	" " 83
284	" " 84
285	" " 85
286	" " 86
287	" " 87
288	" " 88
289	" " 89
290	" " 90
290a	" " 91
291	" " 92
292	" " 93
293	" " 94
294	" " 95
295	" " 96
296	" " 97
300	Real Prop. Law 460
301	" " " 462

B.

Showing the provisions of the Session Laws which have been consolidated in the Real Property Law.

	Consol. Real Prop. Law Section.
L. 1840, Ch. 318, §§ 1-4, ...	114 pt.
L. 1841, Ch. 261, § 1	114 pt.
L. 1846, Ch. 74, § 1	61 pt.
L. 1855, Ch. 17, § 1	18
L. 1855 Ch. 432, § 1	61 pt.
L. 1862, Ch. 365, § 1	340

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	Consol. Real Prop. Law Section.
L. 1862, Ch. 365, § 2	341
L. 1862, Ch. 365 § 3	342
L. 1862, Ch. 365, § 4	343
L. 1862, Ch. 365, § 5	344
L. 1873, Ch. 583, § 1 pt.	231 pt.
L. 1879, Ch. 310, §§ 1, 2, 3	450
L. 1886, Ch. 40, § 1	261
L. 1890, Ch. 503, § 1	360
L. 1890, Ch. 503, § 2	361
L. 1890, Ch. 503, § 3	362
L. 1890, Ch. 503, § 4	363
L. 1890, Ch. 503, § 5	364
L. 1890, Ch. 503, § 6	365
L. 1890, Ch. 503, § 7	366
L. 1892, Ch. 516, §§ 1-7	115
L. 1893, Ch. 701, § 1	113 pt.
L. 1893, Ch. 701, § 2 pt.	113 pt.
L. 1896, Ch. 249, § 1	117
L. 1896, Ch. 572, § 2 pt.	291 pt.
L. 1897, Ch. 593, § 1	2 pt.
L. 1898, Ch. 311, § 1	105 pt.
L. 1900, Ch. 227, §§ 1-3	72
L. 1901, Ch. 291, § 1 pt.	113 pt.
L. 1903, Ch. 88, § 2	103 pt.
L. 1904, Ch. 235, § 1	332
L. 1904, Ch. 692, § 1	274
L. 1908, Ch. 444, § 2	370
L. 1908, Ch. 444, § 3	371
L. 1908, Ch. 444, § 4	372
L. 1908, Ch. 444, § 5	373
L. 1908, Ch. 444, § 6	374
L. 1908, Ch. 444, § 7	375
L. 1908, Ch. 444, § 8	376
L. 1908, Ch. 444, § 9	377
L. 1908, Ch. 444, § 10	378
L. 1908, Ch. 444, § 11	379
L. 1908, Ch. 444, § 12	380
L. 1908, Ch. 444, § 13	381
L. 1908, Ch. 444, § 14	382
L. 1908, Ch. 444, § 15	383
L. 1908, Ch. 444, § 16	384
L. 1908, Ch. 444, § 17	385
L. 1908, Ch. 444, § 18	386
L. 1908, Ch. 444, § 19	387
L. 1908, Ch. 444, § 20	388
L. 1908, Ch. 444, § 21	389
L. 1908, Ch. 444, § 22	390
L. 1908, Ch. 444, § 23	391
L. 1908, Ch. 444, § 24	392
L. 1908, Ch. 444, § 25	393
L. 1908, Ch. 444, § 26	394
L. 1908, Ch. 444, § 27	395
L. 1908, Ch. 444, § 28	396
L. 1908, Ch. 444, § 29	397
L. 1908, Ch. 444, § 30	398
L. 1908, Ch. 444, § 31	399
L. 1908, Ch. 444, § 32	400
L. 1908, Ch. 444, § 33	401
L. 1908, Ch. 444, § 34	402
L. 1908, Ch. 444, § 35	403
L. 1908, Ch. 444, § 36	404
L. 1908, Ch. 444, § 37	405
L. 1908, Ch. 444, § 38	406
L. 1908, Ch. 444, § 39	407
L. 1908, Ch. 444, § 40	408
L. 1908, Ch. 444, § 41	409
L. 1908, Ch. 444, § 42	410
L. 1908, Ch. 444, § 43	411
L. 1908, Ch. 444, § 44	412
L. 1908, Ch. 444, § 45	413
L. 1908, Ch. 444, § 46	414
L. 1908, Ch. 444, § 47	415
L. 1908, Ch. 444, § 48	416
L. 1908, Ch. 444, § 49	417
L. 1908, Ch. 444, § 50	418
L. 1908, Ch. 444, § 51	419
L. 1908, Ch. 444, § 52	420
L. 1908, Ch. 444, § 53	421
L. 1908, Ch. 444, § 54	422
L. 1908, Ch. 444, § 55	423
L. 1908, Ch. 444, § 56	424
L. 1908, Ch. 444, § 57	425
L. 1908, Ch. 444, § 58	426
L. 1908, Ch. 444, § 59	427
L. 1908, Ch. 444, § 60	428
L. 1908, Ch. 444, § 61	429
L. 1908, Ch. 444, § 62	430
L. 1908, Ch. 444, § 63	431
L. 1908, Ch. 444, § 64	432
L. 1908, Ch. 444, § 65	433
L. 1908, Ch. 444, "Schedule A"	434
L. 1908, Ch. 444, "Schedule B"	435

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REAL PROPERTY LAW.

(L. 1909, CHAP. 52, BEING CHAP. 50 OF THE CONSOLIDATED LAWS. IN EFFECT FEB. 17, 1909.)

ARTICLE 1. Short title; definitions (§§ 1, 2).
2. Tenure of real property (§§ 10–18).
3. Creation and division of estates (§§ 30–73).
4. Uses and trusts (§§ 90–117).
5. Powers (§§ 130–182).
6. Dower (§§ 190–207).
7. Landlord and tenant (§§ 220–232).
8. Conveyances and mortgages (§§ 240–275).
9. Recording instruments affecting real property (§§ 290–335).
10. Discharge of ancient mortgages (§§ 340-344).
11. Quieting title to real property (§§ 360–366).
12. Registering title to real property (§§ 370–435).
13. Cemetery lands (§§ 450, 451).
14. Laws repealed; constructions when to take effect (§§ 460–462).

ARTICLE 1.

SHORT TITLE; DEFINITIONS.

SECTION 1. Short title.
2. Definitions.

§ 1. Short title.

This chapter shall be known as the "Real Property Law."

Derivation: Real Property Law, § 1 pt.

§ 2. Definitions.

The terms "real property" and "lands" as used in the first eight articles of this chapter are co-extensive in meaning with lands, tenements and hereditaments.

Derivation: Real Property Law, § 1 pt.

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ARTICLE 2.

TENURE OF REAL PROPERTY.

SECTION 10. Capacity to hold real property.
11. Capacity to transfer real property.
12. Deposition of resident alien. [Repealed.]
13. When and how alien may acquire and transfer real property. [Repealed.]
14. Effect of woman's marriage with alien. [Repealed.]
15. Title through alien.
16. Liabilities of alien holders of real property.
17. Heirs of patriotic Indian.
18. Mines in Saint Lawrence county.

§ 10. Capacity to hold real property.

1. A citizen of the United States is capable of holding real property within this state, and of taking the same by descent, devise or purchase.

2. Alien friends are empowered to take, hold, transmit and dispose of real property within this state in the same manner as native-born citizens and their heirs and devisees take in the same manner as citizens; provided, however, that nothing herein contained shall affect the rights of this state in any action or proceeding for escheat instituted before May nineteenth, eighteen hundred and ninety-seven. (Amended by L. 1913, ch. 152, in effect Apr. 1, 1913.)

Derivation: Real Property Law, § 2; L. 1897, ch. 593, § 1, incorporated.

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§ 11. Capacity to transfer real property.

A person other than a minor, an idiot, or person of unsound mind, seized of or entitled to an estate or interest in real property, may transfer such estate or interest.

Derivation: Real Property Law, § 3.

§ 12. Deposition of resident alien.

[Repealed by L. 1913, ch. 152, in effect Apr. 1, 1913.]

§ 13. When and how alien may acquire and transfer real property.

[Repealed by L. 1913, ch. 152, in effect Apr. 1, 1913.]

§ 14. Effect of woman's marriage with alien.

[Repealed by L. 1913, ch. 152, in effect Apr. 1, 1913.]

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§ 15. Title through alien.

The right, title or interest in or to real property in this state now held or hereafter acquired by any person entitled to hold the same cannot be questioned or impeached by reason of the alienage of any person through whom such title may have been derived. Nothing in this section affects or impairs the right of any heir, devisee, mortgagee, or creditor by judgment or otherwise.

Derivation: Real Property Law, § 7.

§ 16. Liabilities of alien holders of real property.

Every alien holding real property in this state is subject to duties, assessments, taxes and burdens as if he were a citizen of the state.

Derivation: Real Property Law, § 8.

§ 17. Heirs of patriotic Indian.

The heirs of an Indian to whom real property was granted for military services rendered during the war of the Revolution may take and hold such real property by descent as if they were citizens of the state at the time of the death of their ancestors. A conveyance of such real property to a citizen of this state, executed by such Indian or his heirs after March seventh, eighteen hundred and nine, is valid, if executed with the approval of the surveyor-general or state engineer and surveyor indorsed thereupon.

Derivation: Real Property Law, § 9.

§ 18. Mines in Saint Lawrence county.

The proprietors of any mines or veins of lead or copper in the county of Saint Lawrence, may demise, lease, or rent the same for a period not to exceed twenty-one years from the date of any such lease, to any foreign individual or company, and such lessee may take, hold, work, use or convey the same during the said term, in the same manner and subject to the same liabilities as if such lessee were a natural born citizen.

Derivation: L. 1855 ch. 17, § 1.

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ARTICLE 3.

CREATION AND DIVISION OF ESTATES.

SECTION 30. Enumeration of estates.
31. Estates in fee simple and fee simple absolute.
32. Estates tail abolished; remainders thereon.
33. Freehold; chattels real; chattel interests.
34. When estate for life of third person is freehold; when chattel real.
35. Estates in possession and expectancy.
36. Enumeration of estates in expectancy.
37. Definition of future estates.
38. Definition of remainder.
39. Definition of reversion.
40. When future estates are vested; when contingent.
41. Power of appointment not to prevent vesting.
42. Suspension of power of alienation.
43. Limitation of successive estates for life.
44. Remainders on estates for life of third person.
45. When remainder to take effect if estate be for lives of more than two persons.
46. Contingent remainder on term of years.
47. Estate for life as remainder on term of years.
48. Meaning of heirs and issue in certain remainders.
49. Limitations of chattels real.
50. Creation of future and contingent estates.
51. Future estates in the alternative.
52. Future estate valid though contingency improbable.
53. Conditional limitations.
54. When heirs of life tenant take as purchasers.
55. When remainder not limited on contingency defeating precedent estate takes effect.
56. Posthumous children.
57. When expectant estates are defeated.
58. Effect on valid remainders of determination of precedent estate before contingency.
59. Qualities of expectant estates.
60. Disposition of rents and profits.
61. Accumulations.
62. Anticipation of directed accumulation.
63. Undisposed profits.
64. When expectant estates are deemed created.
65. Estates in severalty, joint tenancy and in common.
66. When estate in common; when in joint tenancy.

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SECTION 67. Sale, mortgage or lease in certain cases of real property held by tenant for life.
68. Application, how made.
69. Sale, mortgage or lease, how made.
70. Effect of instruments upon sale, mortgage or lease...
71. Disposition of proceeds of sale.
72. Release of rents reserved by leases in perpetuity.
73. Compromise of controversies arising between claimants to property or estates where the interests of infants, incompetents or persons unknown or not in being are or may be affected.

§ 30. Enumeration of estates.

Estates in real property are divided into estates of inheritance, estates for life, estates for years, estates at will, and by sufferance.

Derivation: Real Property Law, § 20.

§ 31. Estates in fee simple and fee simple absolute.

An estate of inheritance continues to be termed a fee simple, or fee, and when not defeasible or conditional, a fee simple absolute, or an absolute fee.

Derivation: Real Property Law, § 21.

§ 32. Estates tail abolished; remainders thereon.

Estates tail have been abolished; and every estate which would be adjudged a fee tail, according to the law of this state, as it existed before the twelfth day of July, seventeen hundred and eighty-two, shall be deemed a fee simple; and if no valid remainder be limited thereon, a fee simple absolute. Where a remainder in fee shall be limited on any estate which would be a fee tail, according to the law of this state, as it existed previous to such date, such remainder shall be valid, as a contingent limitation on a fee, and shall vest in possession on the death of the first taker, without issue living at the time of such death.

Derivation: Real Property Law, § 22.

§ 33. Freehold; chattels real; chattel interests.

Estates of inheritance and for life shall continue to be termed estates of freehold; estates for years are chattels real; and estates at will or by sufferance continue to be chattel interests, but not liable as such to sale on execution.

Derivation: Real Property Law, § 23.

§ 34. When estate for life of third person is freehold; when chattel real.

An estate for the life of a third person, whether limited to heirs or otherwise, shall be deemed a freehold only during the life of the grantee or devisee; after his death it shall be deemed a chattel real.

Derivation: Real Property Law, § 24.

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§ 35. Estates in possession and expectancy.

Estates, as respects the time of their enjoyment, are divided into estates in possession, and estates in expectancy. An estate which entitles the owner to immediate possession of the property, is an estate in possession. An estate, in which the right of possession is postponed to a future time, is an estate in expectancy.

Derivation: Real Property Law, § 25.

§ 36. Enumeration of estates in expectancy.

All expectant estates, except such as are enumerated and defined in this article, have been abolished. Estates in expectancy are divided into,

1. Future estates; and
2. Reversions.

Derivation: Real Property Law, § 26.

§ 37. Definition of future estates.

A future estate is an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time.

Derivation: Real Property Law, § 27.

§ 38. Definition of remainder.

Where a future estate is dependent on a precedent estate, it may be termed a remainder, and may be created and transferred by that name.

Derivation: Real Property Law, § 28.

§ 39. Definition of reversion.

A reversion is the residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of one or more particular estates granted or devised.

Derivation: Real Property Law, § 29.

§ 40. When future estates are vested; when contingent.

A future estate is either vested or contingent. It is vested, when there is a person in being, who would have an immediate right to the possession of the property, on the determination of all the intermediate or precedent estates. It is contingent while the person to whom or the event on which it is limited to take effect remains uncertain.

Derivation: Real Property Law, § 30.

§ 41. Power of appointment not to prevent vesting.

The existence of an unexecuted power of appointment does not

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prevent the vesting of a future estate, limited in default of the execution of the power.

Derivation: Real Property Law, § 31.

§ 42. Suspension of power of alienation.

The absolute power of alienation is suspended, when there are no persons in being by whom an absolute fee in possession can be conveyed. Every future estate shall be void in its creation, which shall suspend the absolute power of alienation, by any limitation or condition whatever, for a longer period than during the continuance of not more than two lives in being at the creation of the estate; except that a contingent remainder in fee may be created on a prior remainder in fee, to take effect in the event that the persons to whom the first remainder is limited, die under the age of twenty-one years, or on any other contingency by which the estate of such persons may be determined before they attain full age. For the purposes of this section, a minority is deemed a part of a life, and not an absolute term equal to the possible duration of such minority.

Derivation: Real Property Law, § 32.

§ 43. Limitation of successive estates for life.

Successive estates for life shall not be limited, except to persons in being at the creation thereof; and where a remainder shall be limited on more than two successive estates for life, all the life estates subsequent to those of the two persons first entitled thereto shall be void, and on the death of those persons, the remainder shall take effect, in the same manner as if no other life estates had been created.

Derivation: Real Property Law, § 33.

§ 44. Remainders on estates for life of third person.

A remainder shall not be created on an estate for the life of any other person than the grantee or devisee of such estate, unless such remainder be in fee; nor shall a remainder be created on such an estate in a term of years, unless it be for the whole residue of such term.

Derivation: Real Property Law, § 34.

§ 45. When remainder to take effect if estate be for lives of more than two persons.

When a remainder is created on any such life estate, and more than two persons are named as the persons during whose lives the life estate shall continue, the remainder shall take effect on the

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death of the two persons first named, as if no other lives had been introduced.

Derivation: Real Property Law, § 35.

§ 46. Contingent remainder on term of years.

A contingent remainder shall not be created on a term of years, unless the nature of the contingency on which it is limited be such that the remainder must vest in interest, during the continuance of not more than two lives in being at the creation of such remainder, or on the termination thereof.

Derivation: Real Property Law, § 36.

§ 47. Estate for life as remainder on term of years.

No estate for life shall be limited as a remainder on a term of years, except to a person in being at the creation of such estate.

Derivation: Real Property Law, § 37.

§ 48. Meaning of heirs and issue in certain remainder.

Where a remainder shall be limited to take effect on the death of any person without heirs, or heirs of his body, or without issue, the words "heirs" or "issue" shall be construed to mean heirs or issue living at the death of the person named as ancestor.

Derivation: Real Property Law, § 38.

§ 49. Limitations of chattels real.

All the provisions contained in this article, relative to future estates, apply to limitations of chattels real, as well as of freehold estates, so that the absolute ownership of a term of years shall not be suspended for a longer period than the absolute power of alienation can be suspended in respect to a fee.

Derivation: Real Property Law, § 39.

§ 50. Creation of future and contingent estates.

Subject to the provisions of this article, a freehold estate as well as a chattel real may be created to commence at a future day; an estate for life may be created in a term of years, and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created expectant on the determination of a term of years; and a fee or other less estate may be limited on a fee, on a contingency which, if it should occur, must happen within the period prescribed in this article.

Derivation: Real Property Law, § 40.

§ 51. Future estates in the alternative.

Two or more future estates may be created to take effect in the

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alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Derivation: Real Property Law, § 41.

§ 52. Future estate valid though contingency improbable.

A future estate, otherwise valid, shall not be void on the ground of the improbability of the contingency on which it is limited to take effect.

Derivation: Real Property Law, § 42.

§ 53. Conditional limitations.

A remainder may be limited on a contingency, which, if it happens, will operate to abridge or determine the precedent estate; and every such remainder shall be a conditional limitation.

Derivation: Real Property Law, § 43.

§ 54. When heirs of life tenant take as purchasers.

Where a remainder shall be limited to the heirs, or heirs of the body, of a person to whom a life estate in the same premises is given, the persons who, on the termination of the life estate, are the heirs, or heirs of the body, of such tenant for life, shall take as purchasers, by virtue of the remainder so limited to them.

Derivation: Real Property Law, § 44.

§ 55. When remainder not limited on contingency defeating precedent estate takes effect.

When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate, it shall be construed as intended to take effect, only on the death of the first taker, or the expiration by lapse of time of such term of years.

Derivation: Real Property Law, § 45.

§ 56. Posthumous children.

Where a future estate is limited to heirs, or issue, or children, posthumous children shall be entitled to take in the same manner as if living at the death of their parents; and a future estate, dependent on the contingency of the death of any person without heirs, or issue, or children, shall be defeated by the birth of a posthumous child of such person, capable of taking by descent.

Derivation: Real Property Law, § 46.

§ 57. When expectant estates are defeated.

An expectant estate cannot be defeated or barred by any transfer or other act of the owner of the intermediate or precedent estate, nor by any destruction of such precedent estate by disseizin, for-

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feiture, surrender, merger or otherwise; but an expectant estate may be defeated in any manner, or by any act or means which the party creating such estate, in the creation thereof, has provided for or authorized. An expectant estate thus liable to be defeated shall not, on that ground, be adjudged void in its creation.

Derivation: Real Property Law, § 47.

§ 58. Effect on valid remainders of determination of precedent estate before contingency.

A remainder valid in its creation shall not be defeated by the determination of the precedent estate, before the happening of the contingency on which the remainder was limited to take effect; should such contingency afterwards happen the remainder shall take effect in the same manner and to the same extent as if the precedent estate had continued to the same period.

Derivation: Real Property Law, § 48.

§ 59. Qualities of expectant estates.

An expectant estate is descendible, divisable and alienable, in the same manner as an estate in possession.

Derivation: Real Property Law, § 49.

§ 60. Disposition of rents and profits.

A disposition of the rents and profits of real property to accrue and be received at any time subsequent to the execution of the instrument creating such disposition, shall be governed by the rules established in this article for future estates in real property.

Derivation: Real Property Law, § 50.

§ 61. Accumulations.

All directions for the accumulation of the rents and profits of real property, except such as are allowed by statute, shall be void. An accumulation of rents and profits of real property, for the benefit of one or more persons, may be directed by any will or deed sufficient to pass real property, as follows:

1. If such accumulation be directed to commence on the creation of the estate out of which the rents and profits are to arise, it must be made for the benefit of one or more minors then in being, and terminate at or before the expiration of their minority.

2. If such accumulation be directed to commence at any time subsequent to the creation of the estate out of which the rents and profits are to arise, it must commence within the time permitted, by the provisions of this article, for the vesting of future estates,

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and during the minority of the beneficiaries, and shall terminate at or before the expiration of such minority.

3. If in either case, hereinbefore provided for, such direction be for a longer term than during the minority of the beneficiaries, it shall be void only as to the time beyond such minority.

Provided, that the income arising from any real property granted, conveyed, or devised in trust to any incorporated college or other incorporated literary institution for any of the purposes specified in section one hundred and fourteen of this chapter, or for the purpose of providing for the support of any teacher in a grammar-school or institute, may be permitted to accumulate until the same shall amount to a sum sufficient, in the opinion of the regents of the university, to carry into effect any of the charitable uses and trusts mentioned either in section one hundred and fourteen of this chapter or in this paragraph of this section.

Provided, if any of the principal of any trust fund actually received by any incorporated college, or other incorporated literary institution, or by the corporation of any city or village, or by the commissioners of common schools of any town, or by the trustees of any school district, under any grant, conveyance, or devise, for any of the purposes for which trusts are authorized under section one hundred and fourteen of this chapter, shall subsequently become diminished from any cause, such diminution may be made up by the accumulation of the interest or income of the principal of such trust fund, in accordance with the directions, if any contained in the grant, conveyance or devise of any such trust fund; and if no directions for that purpose are contained in such grant, conveyance or devise, then such diminution may be made up in whole or in part by such accumulation, in the discretion of the trustees of such trust fund; but in no case shall such accumulation be allowed to increase the trust fund, beyond the true amount or value thereof, actually received by the trustees, to be estimated after the deduction of all liens and incumbrances on such trust fund, and of all expenses incurred or paid by the trustees in the collection or obtaining the possession of the same.

Provided further, that where a gift, grant, devise or bequest of real and personal property, or of real property alone, is made in trust by the owner thereof to a religious, educational, charitable or benevolent corporation, for any of the purposes specified or comprehended in its charter, not more than one-fourth of the total value of such gift, grant, devise or bequest of real and personal property, or of real property alone, not exceeding in value the sum of fifty thousand dollars, may be set apart for the accumulation of the rents and profits, and income, of such property, for the benefit of such corporation, until such time as such accumulation shall amount to the sum of one hundred thousand dollars, whereupon such accumulation shall be available for the use of such corporation, as a part of the permanent endowment fund thereof, or otherwise as provided in the conditions of the gift, grant, devise or bequest to such corporation. (Amended by L. 1915, ch. 670, in effect May 22, 1915.)

Derivation: Real Property Law, § 51; L. 1846, ch. 74, § 1; L. 1855, ch. 432, § 1.

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§ 62. Anticipation of directed accumulation.

Where such rents and profits are directed to be accumulated for the benefit of a minor entitled to the expectant estate, and such minor is destitute of other sufficient means of support and education, the supreme court, at a special term, or if such accumulation has been directed by will, the surrogate's court of the county in which such will has been admitted to probate, may, on the application of his general or testamentary guardian, direct a suitable sum out of such rents and profits to be applied to his maintenance or education.

Derivation: Real Property Law, § 52.

§ 63. Undisposed profits.

When, in consequence of a valid limitation of an expectant estate, there is a suspension of the power of alienation, or of the ownership, during the continuance of which the rents and profits are undisposed of, and no valid direction for their accumulation is given, such rents and profits shall belong to the persons presumptively entitled to the next eventual estate. But any and all persons who legally shall have begun heretofore, or shall begin hereafter, to receive any such undisposed of rents and profits or any part thereof by virtue of this section or otherwise, shall continue to receive and enjoy the same notwithstanding the birth thereafter of a child or children to any person or persons receiving all or any part of such rents and profits. (Amended by L. 1916, ch. 364, in effect May 1, 1916.)

Derivation: Real Property Law, § 53.

§ 64. When expectant estates are deemed created.

Where an expectant estate is created by grant, the delivery of the grant, and where it is created by devise, the death of the testator, shall be deemed the time of the creation of the estate.

Derivation: Real Property Law, § 54.

§ 65. Estates in severalty, joint tenancy and in common.

Estates, in respect to the number and connection of their owners, are divided into estates in severalty, in joint tenancy and in common; the nature and properties of which, respectively, shall continue to be such as are now established by law, except so far as the same may be modified by the provisions of this chapter.

Derivation: Real Property Law, § 55.

§ 66. When estate in common; when in joint tenancy.

Every estate granted or devised to two or more persons in their own right shall be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate, vested in executors or trustees as such, shall be held by them in joint tenancy. This section shall apply as well to estates already created or vested as to estates hereafter granted or devised.

Derivation: Real Property Law, § 56.

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§ 67. Sale, mortgage or lease in certain cases of real property held by tenant for life.

In any case where real property has heretofore been or shall hereafter be devised by will or conveyed by deed to a person for life, either with remainder or remainders over, to persons the identity of whom can not be definitely ascertained until the death of the person entitled to the life estate, or with a direction that the property be sold on the termination of the life estate, and the proceeds paid or distributed to persons the identity of whom cannot be definitely ascertained until that event, or with a power given to the life tenant or to some other person to appoint or dispose of the remainder or the proceeds of the sale thereof, the supreme court may, by order, on such terms and conditions as seem just and proper, authorize the sale, mortgage or lease of such real property, or any part thereof, whenever it appears to the satisfaction of the court that said real property, or some portion thereof, has become so unproductive or such circumstances or conditions have arisen subsequent to the devise or deed that it is for the best interest of the life tenant and of the remaindermen and of all persons, if any, interested or to become interested in the proceeds of any sale of said real property, that a sale, mortgage or lease should be had, or that for other peculiar reasons, or on account of other peculiar circumstances, it is for the best interest of the life tenant and the remaindermen and of all persons, if any, interested or to become interested in the proceeds of any sale of such real property, that a sale, mortgage or lease should be had. Such sale, mortgage or lease may be authorized whether any of the persons who may eventually become entitled to the remainders in said real property or to the proceeds of the sale thereof are in being or not, and whether at the time of sale, mortgage or lease the reversion is in the life tenant or in some other person. The supreme court shall not grant such an order, unless it appears to the satisfaction of such court, that a written notice, stating the time and place of the application therefor, has been served upon the life tenant, and upon every other person in being having an estate or interest, vested or contingent, in reversion or remainder, in said real property or in the proceeds of sale thereof, or having a power to appoint or dispose of said remainder, reversion or proceeds, or being the appointee under such a power, which prior to the grant-

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ing of such order shall have been exercised by a person other than the life tenant, at least eight days before the making thereof; provided that where a future estate or interest is limited in any contingency to persons who shall compose a certain class upon the happening of a future event, it shall be sufficient if such notice be served upon the persons who would have been entitled to such estate or interest if such event had happened immediately before the application is made. If such beneficiary or other person is an adult without the state, or is a minor, lunatic, person of unsound mind, habitual drunkard or absentee, notice shall be served on such beneficiary or other person in such manner as the court or a justice thereof may prescribe.

Except as expressly provided in this section no person shall be entitled to notice under this section solely by reason of the fact that he has been or may be designated as appointee of said property or proceeds, or of any interest therein, under a power of appointment or disposition. Upon the return day of the notice the court shall, upon its own motion, appoint a special guardian for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by a committee duly appointed. If there is no person in being having vested or contingent interest in remainder or reversion in said real property or in the proceeds of sale after the termination of the life estate, other than a reversioner who is the life tenant or whose reversion is a mere naked legal interest which can never take effect in possession otherwise than subject to a power of sale or a power of appointment the court shall on the return day of the motion appoint some disinterested person to represent and protect the interests of the persons to become entitled to the remainder or remainders or to become entitled to an interest in the proceeds of sale. (Amended by L. 1913, ch. 55; L. 1918, ch. 578; L. 1920, ch. 639, in effect Sept. 1, 1920.)

Derivation: Real Property Law, § 57, added by L. 1903, ch. 432, § 1.

§ 68. Application, how made.

The application must be made by petition duly verified, which shall set forth the provisions of the will or the deed creating the estate, the condition of the estate and the particular facts which make it necessary or proper that the application should be granted.

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After taking proof of the facts either before the court or by a referee and hearing the parties and fully examining into the matter, the court must make an order upon the application. In case the application is granted, the order must authorize the real property described in the petition to be sold, mortgaged or leased upon such terms and conditions as the court may prescribe, but in the case of a lease the term thereof shall not exceed twenty-one years. (Amended by L. 1913, ch. 55; L. 1920, ch. 639, in effect Sept. 1, 1920.)

Derivation: Real Property Law, § 58, added by L. 1903, ch. 432, § 1.

§ 69. Sale, mortgage or lease, how made.

The sale, mortgage or lease shall be made by a referee appointed by the court for that purpose. Before a sale, mortgage or lease can be made pursuant to the order provided for in the preceding section, the referee must enter into an agreement therefor, subject to the approval of the court, and must report the agreement to the court under oath. Upon confirmation thereof he must execute as directed by the court a deed, mortgage, or lease of said real property. The life tenant, or if he be suffering from any disability, his committee or special guardian, acting on his behalf, must join in the execution of said instrument. In case a sale of such real property is authorized, the final order must direct that the proceeds of such sale be paid into the hands of some trust company authorized by law to act as trustee or to some person or persons who shall thereby become trustee or trustees for such life tenant and remaindermen, or for such other person or persons as may be or become entitled to the proceeds of such sale, and must require the trustee, unless it be a trust company as aforesaid, to give a bond in such an amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting of all moneys received by him pursuant to said order. In case a mortgage of such real property is authorized, the final order must direct that the net proceeds of said mortgage, after the payment of liens and encumbrances, be paid to such a trust company or other trustee bonded as aforesaid, to be applied by said trustee in accordance with the terms of the final order. (Amended by L. 1918, ch. 578; L. 1920, ch. 639, in effect Sept. 1, 1920.)

Derivation: Real Property Law, § 59, added by L. 1903, ch. 432, § 1.

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§ 70. Effect of instruments upon sale, mortgage or lease.

A deed, mortgage or lease made pursuant to a final order granted as provided in the foregoing sections sixty-seven, sixty-eight, and sixty-nine shall bind the remainders and reversion as well as the life estate in said real property and shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being, interested in the real property aforesaid, or having estates or interests vested or contingent, in reversion or remainder in said real property, or in the proceeds of the sale thereof, and against all persons whether in being or not who may by appointment or otherwise have or acquire an interest in said property or in the proceeds of the sale thereof, but before the order directing the sale, mortgage or lease can be made, all adult persons not under disability having an interest, vested or contingent, in reversion or remainder, in said real property or in the proceeds of such sale, or having a power to appoint or dispose of said remainder, reversion or proceeds, or an appointee under such a power, and who are entitled to notice under section sixty-seven of this chapter, must make and file with the clerk of the court in which the proceedings have been instituted, a written instrument, duly executed and acknowledged, consenting that such an order of sale, mortgage or lease may be made, and in no event shall such order be made without the like written consent of the life tenant if not suffering from disability. (Amended by L. 1913, ch. 55; L. 1918, ch. 578; L. 1920, ch. 639, in effect Sept. 1, 1920.)

Derivation: Real Property Law, § 60, added by L. 1903, ch. 432, § 1.

§ 71. Disposition of proceeds of sale.

The trustees appointed by the court of funds realized from the sale of real property under these provisions shall, unless otherwise ordered by the court, invest such funds in the manner and form prescribed and regulated by law, relative to investment of trust funds by trustees, and shall pay and apply the net income, after deducting all lawful expenses and commissions, to the use of the life tenant during life and upon the death of the life tenant pay over and distribute the principal to and among the remaindermen or other persons that may then be entitled thereto in accordance with the order of the court upon an accounting. (Amended by L. 1918, ch. 578, in effect May 9, 1918.)

Derivation: Real Property Law, § 61, added by L. 1903, ch. 432, § 1.

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§ 72. Release of rents reserved by leases in perpetuity.

1. Any person interested in lands held under a lease in perpetuity, upon which no rent has been paid for at least twenty years, may present his petition to the courts mentioned in this section asking that it be declared that the rents and reversion have been released to the owner of the fee. Such petition shall be verified, shall describe the lease and allege that the rents and reversion have been released, and shall state such facts as the petitioner can ascertain relative to the execution of a release and the identity of the persons who would otherwise be the present owners of the rents and reversion and the last known owner thereof.

2. Such petition may be presented to the supreme court or to the county court of the county where the lands are situated. The court may thereupon order all persons interested to show cause at a certain time and place why the rents and reversion should not be declared to have been released. A description of the lease and lands affected thereby and the name of the last known owner of the rents and reversion shall be specified in such order, and the order shall be published in such newspaper or newspapers and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

3. The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the facts stated in the petition. Upon being satisfied that the matters alleged in the petition are true, the court may make an order declaring that the rents and reversion have been released to the owner of the fee. The nonpayment of rent under any such lease for twenty years shall be presumptive evidence of such a release. The entry of such order in the office of the clerk of the county where such lands are situated shall have the same effect as a release of such rents and reversion to such owner then duly executed and recorded. The county clerk shall note on the margin of the record of the original lease a minute of the entry of such order.

Derivation: L. 1900, ch. 227, §§ 1–3.

§ 73. Compromise of controversies arising between claimants to property or estates where the interests of infants, incompetents or persons unknown or not in being are or may be affected.

(a) The supreme court or the surrogate's court having juris-

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diction of the estate or property involved may authorize executors, administrators and trustees to adjust by compromise any controversy that may arise between different claimants to the esate or property in their hands to which agreement such executors, administrators or trustees and all other parties in being who claim an interest in such estate shall be parties in person or by guardian as hereinafter provided.

(b) The supreme court or the surrogate's court having jurisdiction of the estate or property involved may likewise authorize the person or persons named as executors in one or more instruments purporting to be the last will and testament of a person deceased, or the petitioners for administration with such will or wills annexed, to adjust by compromise any controversy that may arise between the persons claiming as devisees or legatees under such will or wills and the persons entitled to or claiming the estate of the deceased under the statutes regulating the descent and distribution of intestate estates, to which agreement or compromise the persons named as executors or the petitioners for administration with the will annexed, as the case may be, those claiming as devisees or legatees and those claiming the estate as intestate, shall be parties. Provided that persons named as executors in any instrument who have renounced or shall renounce such executorship shall not be required to be parties to such compromise.

(c) Where an infant, lunatic, person of unsound mind or habitual drunkard is a necessary party to a compromise under this section he shall be represented in the proceedings by a special guardian appointed by the court, who shall in the name and on the behalf of the party he represents make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court.

(d) If it appears to the satisfaction of the court that the interests of persons unknown or the future contingent interests of persons not in being are or may be affected by the compromise, the court must appoint some suitable person or persons to represent such interests in the compromise and to make all proper instruments necessary to carry into effect any compromise that is sanctioned by the court. In the event that by the terms of any compromise made pursuant to this section money or property is

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directed to be set apart or held for the benefit of or to represent the interest of infants, incompetents or persons unknown or unborn, the same may in a proper case be paid or deposited in court and remain subject to the order of the court.

(e) An agreement of compromise made in writing pursuant to this section, if found by the court to be just and reasonable in its effects upon the interests in said estate or property of infants, lunatics, persons of unsound mind, unknown persons or the future contingent interests of persons not in being, shall be valid and binding upon such interests as well as upon the interests of adult persons of sound mind.

(f) An application for the approval of a compromise pursuant to this section must be made by petition duly verified, which shall set forth the provisions of any instruments or documents by virtue of which any claim is made to the property or estate in controversy and any and all facts relating to the claims of the various parties to the controversy and the possible contingent interests of persons not in being and all facts which make it proper or necessary that the proposed compromise be approved by the court. After taking proof of the facts either before the court or by a referee and hearing the parties and fully examining into the matter the court must make an order upon the application. (Added by L. 1919, ch. 441, in effect May 5, 1919.)

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ARTICLE 4.

USES AND TRUSTS.

SECTION
90. Executed uses existing.
91. Certain uses and trusts abolished.
92. When right to possession creates legal ownership.
93. Trustee of passive trust not to take.
94. Grant to one where consideration paid by another.
95. Bona fide purchasers protected.
96. Purposes for which express trusts may be created.
97. Certain devises to be deemed powers.
98. Surplus income of trust property liable to creditors.
99. When an authorized trust is valid as a power.
100. Trustee of express trust to have whole estate.
101. Qualification of last section.
102. Interest remaining in grantor of express trust.
103. What trust interest may be alienated.
104. Transferee of trust property protected.
105. When trustee may convey or exchange trust property.
106. When trustee may lease trust property.
107. Notice to beneficiary and other persons interested where real property affected by a trust is conveyed, mortgaged or leased, and procedure thereupon.
108. Person paying money to trustee protected.
109. When estate of trustee ceases.
110. Termination of trusts for the benefit of creditors.
111. Trust estate not to descend.
112. Resignation or removal of trustee and appointment of successor.
113. Grants and devises of real property for charitable purposes.
114. Certain educational and other charitable uses authorized.
114a. Trusts for care of cemetery lots, et cetera.
115. Certain grants for charitable and other uses regulated.
*116. Executors', fiduciaries' and trustees' investments in certain stocks regulated.
117. Commissioners of trustees.

§ 90. Executed uses existing.

Every estate which is now held as a use, executed under any former statute of the state, is confirmed as a legal estate.

Derivation: Real Property Law, § 70.

§ 91. Certain uses and trusts abolished.

Uses and trusts concerning real property, except as authorized

* So in original.

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and modified by this article, have been abolished; every estate or interest in real property is deemed a legal right, cognizable as such in the courts, except as otherwise prescribed in this chapter.

Derivation: Real Property Law, § 71.

§ 92. When right to possession creates legal ownership.

Every person, who, by virtue of any grant, assignment or devise, is entitled both to the actual possession of real property, and to the receipt of the rents and profits thereof, in law or equity, shall be deemed to have a legal estate therein, of the same quality and duration, and subject to the same conditions, as his beneficial interest; but this section does not divest the estate of the trustee in any trust existing on the first day of January, eighteen hundred and thirty, where the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust.

Derivation: Real Property Law, § 72.

§ 93. Trustee of passive trust not to take.

Every disposition of real property, whether by deed or by devise, shall be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to another to the use of, or in trust for, such person; and if made to any person to the use of, or in trust for another, no estate or interest, legal or equitable, vests in the trustee. But neither this section nor the preceding sections of this article shall extend to the trusts arising, or resulting by implication of law, nor prevent or affect the creation of such express trusts as are authorized and defined in this chapter.

Derivation: Real Property Law, § 73.

§ 94. Grant to one where consideration paid by another.

A grant of real property for a valuable consideration, to one person, the consideration being paid by another, is presumed fraudulent as against the creditors, at that time, of the person paying the consideration, and, unless a fraudulent intent is disproved, a trust results in favor of such creditors, to an extent necessary to satisfy their just demands; but the title vests in the grantee, and no use or trust results from the payment to the person paying the consideration, or in his favor, unless the grantee either,

1. Takes the same as an absolute conveyance, in his own name, without the consent or knowledge of the person paying the consideration; or,

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2. In violation of some trust, purchases the property so conveyed with money or property belonging to another.

Derivation: Real Property Law, § 74.

§ 95. Bona fide purchasers protected.

An implied or resulting trust shall not be alleged or established, to defeat or prejudice the title of a purchaser for a valuable consideration without notice of the trust.

Derivation: Real Property Law, § 75.

§ 96. Purposes for which express trusts may be created.

An express trust may be created for one or more of the following purposes:

1. To sell real property for the benefit of creditors;

2. To sell, mortgage or lease real property for the benefit of annuitants or other legatees, or for the purpose of satisfying any charge thereon;

3. To receive the rents and profits of real property, and apply them to the use of any person, during the life of that person, or for any shorter term, subject to the provisions of law relating thereto;

4. To receive the rents and profits of real property, and to accumulate the same for the purposes, and within the limits, prescribed by law.

Derivation: Real Property Law, § 76.

§ 97. Certain devises to be deemed powers.

A devise of real property to an executor or other trustee, for the purpose of sale or mortgage, where the trustee is not also empowered to receive the rents and profits, shall not vest any estate in him; but the trust shall be valid as a power, and the real property shall descend to the heirs, or pass to the devisees of the testator, subject to the execution of the power.

Derivation: Real Property Law, § 77.

§ 98. Surplus income of trust property liable to creditors.

Where a trust is created to receive the rents and profits of real property, and no valid direction for accumulation is given, the surplus of such rents and profits, beyond the sum necessary for the education and support of the beneficiary, shall be liable to the claims of his creditors in the same manner as other personal property, which cannot be reached by execution.

Derivation: Real Property Law, § 78.

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§ 99. When an authorized trust is valid as a power.

Where an express trust relating to real property is created for any purpose not specified in the preceding sections of this article, no estate shall vest in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, shall be valid as a power in trust, subject to the provisions of this chapter. Where a trust is valid as a power, the real property to which the trust relates shall remain in or descend to the persons otherwise entitled, subject to the execution of the trust as a power.

Derivation: Real Property Law, § 79.

§ 100. Trustee of express trust to have whole estate.

Except as otherwise prescribed in this chapter, an express trust, valid as such in its creation, shall vest in the trustee the legal estate, subject only to the execution of the trust, and the beneficiary shall not take any legal estate or interest in the property, but may enforce the performance of the trust.

Derivation: Real Property Law, § 80.

§ 101. Qualification of last section.

The last section shall not prevent any person, creating a trust, from declaring to whom the real property, to which the trust relates, shall belong, in the event of the failure or termination of the trust, or from granting or devising the property, subject to the execution of the trust. Such a grantee or devisee shall have a legal estate in the property, as against all persons, except the trustees, and those lawfully claiming under them.

Derivation: Real Property Law, § 81.

§ 102. Interest remaining in grantor of express trust.

Where an express trust is created, every legal estate and interest not embraced in the trust, and not otherwise disposed of, shall remain in or revert to, the person creating the trust or his heirs.

Derivation: Real Property Law, § 82.

§ 103. What trust interest may be alienated.

1. The right of a beneficiary of an express trust to receive rents and profits of real property and apply them to the use of any person, cannot be transferred by assignment or otherwise, but the right and interest of the beneficiary of any other trust in real property may be transferred.

2. The provisions of this section as here amended shall not im-

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pair or affect any rights existing on March twenty-fifth, nineteen hundred and three.

Derivation: Real Property Law, § 83, as amended by L. 1903, ch. 88, § 1; L. 1903, ch. 88, § 2, incorporated.

§ 104. Transferee of trust property protected.

Where an express trust is created, but is not contained or declared in the conveyance to the trustee, the conveyance shall be deemed absolute as to the subsequent creditors of the trustee not having notice of the trust, and as to subsequent purchasers from the trustee, without notice and for a valuable consideration.

Derivation: Real Property Law, § 84.

§ 105. When trustee may convey or exchange trust property.

1. If the trust is expressed in the instrument creating the estate, every sale, conveyance or other act of the trustee, in contravention of the trust, except as provided in this section, shall be absolutely void. The supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such trustee to mortgage or sell such real property, or any part thereof, whenever it appears to the satisfaction of the court that said real property, or some portion thereof, has become so unproductive that it is for the best interest of such estate or that it is necessary or for the benefit of the estate to raise funds for the purpose of preserving it by paying off incumbrances or of improving it by erecting buildings or making other improvements, or that for other peculiar reasons, or on account of other peculiar circumstances, it is for the best interest of said estate, and whenever the interest of the trust estate in any real property is an undivided part or share thereof, the same may be sold if it shall appear to the court to be for the best interest of such estate.

2. Whenever, by the provisions of a will, or of a deed of trust, a power of sale is given to one or more executors or trustees, it shall be lawful for any such executor or trustee, subject to the approval of the supreme court, to acquire or exchange lands adjacent to the land or lands subject to such power of sale, as may be deemed desirable for the straightening or improvement of the boundary lines thereof, or when the lands owned by the trustees or subject to the power of sale and the adjacent lands to be acquired have the same building or physically connected buildings thereon, upon such terms and conditions as may be approved by the supreme court; and the supreme court may, by order, on such terms and conditions as seem just and proper, authorize any such executor or trustee to acquire or exchange lands adjacent to the land or lands subject to such power of sale for the purposes mentioned, or in the instances mentioned. (Amended by L. 1918, ch. 403, in effect April 30, 1918.)

Derivation: Real Property Law, § 85, as amended by L. 1897, ch. 136, § 1; L. 1898, ch. 311, § 1, incorporated.

§ 106. When trustee may lease trust property.

A trustee appointed to hold real property during the life of a

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beneficiary, and to pay or apply the rents, income and profits thereof to, or for, the use of such beneficiary, may execute and deliver a lease of such real property for a term not exceeding five years, without application to the court. The supreme court may, by order, on such terms and conditions as seem just and proper, in respect to rental and renewals, authorize such a trustee to lease such real property for a term exceeding five years, if it appears to the satisfaction of the court that it is for the best interests of the trust estate, and may authorize such trustee to covenant in the lease to pay at the end of the term, or renewed term, to the lessee the then fair and reasonable value of any building which may have been erected on the premises during such term. If any such trustee has leased any such trust property before June fourth, eighteen hundred and ninety-five, for a longer term than five years, the supreme court, on the application of such trustee, may, by order, confirm such lease, and such order, on the entry thereof, shall be binding on all persons interested in the trust estate.

Derivation: Real Property Law, § 86.

§ 107. Notice to beneficiary and other persons interested where real property affected by a trust is conveyed, mortgaged or leased, and procedure thereupon.

The supreme court shall not grant an order under either of the last two preceding sections unless it appears to the satisfaction of such court that a written notice stating the time and place of the application therefor has been served upon the beneficiary of such trust, and every other person in being having an estate or interest vested or contingent in reversion or remainder in said real property, or in the proceeds of sale thereof, or having a power to appoint or dispose of said remainder, reversion or proceeds, or being the appointee under such a power, which prior to the granting of such order shall have been exercised by a person other than the life tenant, at least eight days before the making thereof, if such beneficiary or other person is an adult within the state, or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof shall prescribe. But if any part of the reversion or remainder in said real property or in the proceeds of sale thereof is limited in any contingency to the persons who shall compose a certain class upon the termination of the trust, the court may, in its discretion, entertain the application and grant such order upon proof of service of notice of the application upon those persons who would be entitled to such reversion, remainder or proceeds if the event upon which the termination of the trust depends had happened immediately before the application was made. Except as provided in this section no person shall be entitled to notice under this section solely by reason of the fact that he has been or may be designated as appointee of said property or proceeds, or of any interest

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therein, under a power of appointment or disposition. The sale, mortgage, or lease prayed for in the application may be authorized whether any of the persons who may eventually become entitled to the remainders in said real property or to the proceeds of the sale thereof are in being or not and whether at the time of sale, mortgage or lease the reversion is in the life tenant or in some other person. The court shall appoint a guardian ad litem for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by a committee duly appointed. If there is no person in being having a vested or contingent interest in remainder or reversion in said real property or in the proceeds of sale after the termination of the trust estate, other than a reversioner who is a life tenant or whose reversion is a mere naked legal interest which can never take effect in possession otherwise than subject to a power of sale or a power of appointment the court shall on the return day of the motion appoint some disinterested person to represent and protect the interests of the persons to become entitled to the remainder or remainders or to become entitled to an interest in the proceeds of sale. The application must be by petition duly verified which shall set forth the condition of the trust estate and the particular facts which make it necessary or proper that the application should be granted. After taking proof of the facts, either before the court or a referee, and hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted, the final order must authorize the real property affected by the trust or some portion thereof, to be mortgaged, sold or leased, upon such terms and conditions as the court may prescribe. In case a mortgage or sale of any portion of such real property is authorized, the final order must direct the disposition of the proceeds of such mortgage or sale and must require the trustee, unless it be a trust company authorized by law to act as trustee, to give bond in such amount and with such sureties as the court directs, conditioned for the faithful discharge of his trust and for the due accounting for all moneys received by him pursuant to said order. If the trustee elects not to give such bond, the final order must require the proceeds of such mortgage or sale to be paid into court to be disposed of or invested as the court shall specifically direct. Before a mortgage, sale or lease can be made pursuant to the final order, the trustee must enter into an agreement therefor, subject to the approval of the court and must report the agreement to the court under oath. Upon the confirmation thereof, by order of the court he must execute as directed by the court a mortgage, deed or

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lease. A mortgage, conveyance or lease made pursuant to a final order granted as provided in this and the last two preceding sections shall bind the remainders and reversions as well as the trust interest in said real property, and shall be valid and effectual against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being interested in the trust or having estates or interests vested or contingent in reversion or remainder in said real property, or in the proceeds of any sale thereof, and against all other persons so interested or having such estates or interests who shall consent to such order, or who have been made parties to such proceeding, or who are not entitled to notice thereof as herein provided. (Amended by L. 1918, ch. 578; L. 1920, ch. 639, in effect Sept. 1, 1920.)

Derivation: Real Property Law, § 87, as amended by L. 1897, ch. 136, § 2, and L. 1907, ch. 242, § 1.

§ 108. Persons paying money to trustee protected.

A person who shall actually and in good faith pay a sum of money to a trustee, which the trustee as such is authorized to receive shall not be responsible for the proper application of the money, according to the trust; and any right or title derived by him from the trustee in consideration of the payments shall not be impeached or called in question in consequence of a misapplication by the trustee of the money paid.

Derivation: Real Property Law, § 88.

§ 109. When estate of trustee ceases.

When the purpose for which an express trust is created ceases, the estate of the trustee shall also cease.

Derivation: Real Property Law, § 89.

§ 110. Termination of trusts for the benefit of creditors.

Where an estate or interest in real property has heretofore vested or shall hereafter vest in the assignee or other trustee for the benefit of creditors, it shall cease at the expiration of twenty-five years from the time when the trust was created, except where a different limitation is contained in the instrument creating the trust, or is especially prescribed by law. The estate or interest remaining in the trustee or trustees shall thereupon revert to the assignor, his heirs, devisee or assignee, as if the trust had not been created.

Derivation: Real Property Law, § 90.

§ 111. Trust estate not to descend.

On the death of the last surviving or sole surviving trustee of an express trust the trust estate shall not descend to his heirs nor pass to his next of kin or personal representatives; but in

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the absence of a contrary direction on the part of the person creating the same, such trust, if unexecuted, shall vest in the supreme court, with all the powers and duties of the original trustee or trustees, and shall be executed by some person appointed for that purpose under the direction of the court, but who shall not be appointed until the beneficiary or beneficiaries shall have been brought into court by such notice and in such manner as the court or a justice thereof may direct; and the person so appointed shall give such security as the court may require, and shall be subject to the same requirements of law as to accounting and the administration of the trust as are testamentary trustees; and shall be entitled to such compensation for his services by way of commissions as may be fixed by any court which has power to pass upon his final account, which shall in no case exceed that now allowed by law to executors and administrators, besides his just and reasonable expenses in the matter in which he is appointed. (Amended by L. 1911, ch. 216, in effect May 31, 1911.)

Derivation: Real Property Law, § 91, as amended by L. 1902, ch. 151, § 1.

§ 112. Resignation or removal of trustee and appointment of successor.

The supreme court has power, subject to the regulations established for the purpose in the general rules of practice:

1. On his application by petition or action, to accept the resignation of a trustee, and to discharge him from the trust on such terms as are just.

2. In an action brought, or on a petition presented, by any person interested in the trust, to remove a trustee who has violated or threatens to violate his trust, or who is insolvent, or whose insolvency is apprehended, or who for any other cause shall be deemed to be an unsuitable person to execute the trust.

3. In case of the resignation or removal of a trustee, to appoint a new trustee in his place, and in the meantime, if there is no acting trustee, to cause the trust to be executed by a receiver or other officer under its direction. This section shall not apply to a trust arising or resulting by implication of law, nor where other provision is specially made by law, for the resignation or removal of a trustee or the appointment of a new trustee.

Derivation: Real Property Law, § 92.

§ 113. Grants and devises of real property for charitable purposes.

1. No gift, grant, or devise to religious, educational, charitable or benevolent uses, which shall in other respects be valid under the laws of this state, shall be deemed invalid by reason of the indefiniteness or uncertainty of the persons designated as the beneficiaries thereunder in the instrument creating the same. If in the instrument creating such a gift, grant, or devise there is a trustee named to execute the same, the legal title to the lands or property given, granted, or devised for such purposes shall vest in such trustee. If no person be named as trustee then the title to such lands or property shall vest in the supreme court.

2. The supreme court shall have control over gifts, grants and devises in all cases provided for by subdivision one of this section, and whenever it shall appear to the court that circumstances have so changed since the execution of an instrument containing a gift, grant or devise to religious, educational, charitable or benevolent uses as to render impracticable or impossible a literal compliance with the terms of such instrument, the court may, upon the application of the trustee or of the person or corporation having the custody of the property, and upon such notice as the court shall direct, make an order directing that such gift, grant or devise shall be administered or expended in such manner as in the judgment of the court will most effectually accomplish the general purpose of

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the instrument, without regard to and free from any specific restriction, limitation or direction contained therein; provided, however, that no such order shall be made without the consent of the donor or grantor of the property, if he be living. (Subd. 2, amended by L. 1909, ch. 144, in effect April 3, 1909.)

3. The attorney-general shall represent the beneficiaries in all such cases, and it shall be his duty to enforce such trusts by proper proceedings in the courts.

4. The supreme court may authorize the trustee or the person or corporation holding title thereto, to sell or mortgage any real property which has been or shall hereafter be granted or devised to religious, educational, charitable or benevolent uses or which shall be held or owned by any corporation charged with religious, educational, charitable or benevolent uses or held so that the income therefrom is held to any religious, educational, charitable or benevolent uses, whenever it appears to the satisfaction of the the court that such real property or any portion thereof has become or is likely to become unproductive or that it has depreciated or is likely to depreciate in value or that it is advisable to raise money to improve or erect buildings upon property thus held or that it is expedient for any other reason that such real property be sold or mortgaged. This section shall not be deemed to restrict in any wise such powers or rights as any such trustee or any corporation may have by law or by the terms of any grant or devise of such real property.

5. The supreme court shall not grant an order under the preceding subdivision unless it appears to the satisfaction of the court that eight days' written notice stating the time and place of the application for such order has been served upon the attorney-general. The attorney-general shall represent the state, the beneficiaries of any such trust and the persons who might be benefited by the religious, educational, charitable or benevolent uses or purposes to which the real property which is the subject of such application has been held. If the sale or mortgage is to be made by a corporation, all provisions of law applicable to sales or mortgages of real property to be made by such corporation shall be complied with. If any adult person within the state has an interest, vested or contingent, in reversion or remainder in such real property, at least eight days' notice of such application shall be given to such person, and if any person, having such an interest is a minor, a lunatic or a person of unsound mind, an habitual drunkard or an absentee, service of the notice on such person shall be made in such manner as the court or a justice thereof may direct. Before making a final order, the court shall appoint a guardian for any minor and for any lunatic, person of unsound mind or habitual drunkard who shall not be represented by a committee duly appointed.

6. A conveyance or mortgage made pursuant to an order granted as provided in this section shall be valid and effectual against the state as representative of the beneficiaries of such trust and of the persons who might be benefited by the uses to which such real property is held and against all minors, lunatics, persons of unsound mind, habitual drunkards and persons not in being, interested in such real property or having or thereafter becoming entitled to estates, vested or contingent, in reversion or remainder in such real property and against all other persons who shall consent to such order or shall have been made parties to such proceeding. The purchaser or mortgagee or any person claiming under the purchaser or mortgagee shall not be bound to see to the disposition of the proceeds of any such sale or mortgage. (Amended by L. 1919, ch. 71, in effect March 19, 1919.)

Derivation: Real Property Law, § 93, and L. 1893, ch. 701, §§ 1 and 2 pt.; also L. 1901, ch. 291, § 1. Amended by L. 1909, ch. 144, in effect April 3, 1909.

§ 114. Certain educational and other charitable uses authorized.

1. Real property may be granted, devised, and conveyed to any incorporated college or other literary incorporated institution in this state, to be held in trust for any one or more of the following purposes:

(1) To establish and maintain an observatory;

(2) To found and maintain professorships and scholarships;

(3) To provide and keep in repair a place for the burial of the dead; or

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(4) For any other specific purposes comprehended in the general objects authorized by their respective charters.

The said trusts may be created, subject to such conditions and visitations as may be prescribed by the grantor or donor, and agreed to by said trustee, and all property which shall hereafter be granted to any incorporated college or other literary incorporated institution in trust for any of the aforesaid purposes, may be held by such college or institution upon such trusts, and subject to such conditions and visitations as may be prescribed and agreed to as aforesaid.

2. Real estate may be granted, devised, and conveyed to the corporation of any city or village of this state, to be held in trust for any purpose of education, or the diffusion of knowledge, or for the relief of distress, or for parks, gardens, or other ornamental grounds, or grounds for the purposes of military parades and exercise, or health and recreation, within or near such incorporated city or village, upon such conditions as may be prescribed by the grantor or donor, and agreed to by such corporation; and all real estate so granted or conveyed to such corporation may be held by the same, subject to such conditions as may be prescribed and agreed to as aforesaid.

3. Real estate may be granted or devised, to commissioners of common schools of any town, and to trustees of any school district, in trust for the benefit of the common schools of such town, or for the benefit of the schools of such district.

4. The trusts authorized by this section may continue for such time as may be necessary to accomplish the purposes for which they may be created.

Derivation: L. 1840, ch. 318, §§ 1–4; L. 1841, ch. 216, § 1, incorporated.

§ 114-a. Trusts for care of cemetery lots, et cetera.

Gifts, grants and devises of real property, in trust for the purpose of applying the proceeds or income thereof to the perpetual care and maintenance, improvement or embellishment of private burial lots in cemeteries, and the walls, fences, monuments, structures and tombs thereon, are permitted and shall be deemed to be for charitable and benevolent uses; and shall not be deemed to be invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instrument creating the same, nor shall they be deemed invalid as violating any existing laws against perpetuities or suspension of the power of alienation of title to property. But nothing herein contained shall affect any existing authority of the courts to pass upon the reasonableness of the amount of such gift, grant or devise. (Added by L. 1909, ch. 218, in effect April 20, 1909.)

§ 115. Certain grants for charitable and other uses regulated.

1. Any person desiring, in his lifetime, to promote the public welfare by founding, endowing and having maintained a public library, museum or other educational institution, or a chapel and crematory, within this state, or to establish a home for a board of trade or chamber of commerce within this state, may to that end and for such purposes by grant, in writing, convey to a trustee, or any number of trustees, named in such grant, and to their successors, any real property belonging to such person and situated or being within this state.

2. The person making such grant may therein designate:

(1) The nature, object and purposes of the institution to be founded, endowed and maintained, or of the corporation or corporations, for whose use the home is to be established.

(2) In case of the founding of an institution the name by which it shall be known.

(3) The powers and duties of the trustee or trustees and the manner in which he or they shall account, and to whom, if accounting be required; but such powers and duties shall not be held to be

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exclusive of other powers which may be necessary to enable such trustee or trustees to fully carry out the object of such grant.

(4) The mode and manner, and by whom, the successors to the trustee or trustees named in the grant are to be appointed.

(5) Such rules and regulations for the management of the property conveyed as the grantor may elect to prescribe; but such rules shall, unless the grantor otherwise prescribe, be deemed advisory only, and shall not preclude such trustee or trustees from making such changes as new conditions may from time to time require.

(6) The place or places where, and the time when, the building or buildings necessary and proper for the institution shall be erected, and the character and extent thereof. The person making such grant may therein provide for all other things necessary and proper to carry out the purposes thereof, and especially may such person provide for such lectures, exhibitions, instruction or amusement in connection with such institution as he may deem desirable.

3. The trustee or trustees named in such grant and their successors, may in the name of the institution, as designated in such grant, sue and defend, in relation to the trust property and in relation to all matters affecting the institution endowed and established by such grant.

4. The person making such grant, by a provision therein, may elect, in relation to the property conveyed and in relation to the erection, maintenance and management of such institution, to perform, during his life, all the duties and exercise all the powers which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named. If the person making such grant, and making the election aforesaid, be a married person, such person may further provide that if the wife of such person survive him, then such wife, during her life, may, in relation to the property conveyed, and in relation to the erection, maintenance and management of such institution, perform all the duties and exercise all the powers, which, by the terms of the grant, are enjoined upon and vested in the trustee or trustees therein named, and in all such cases the powers and duties conferred and imposed by such grant upon the trustee or trustees therein named, shall be exercised and performed by the person making such grant, or by his wife during his or her life, as the case may be; provided, how-

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ever, that upon the death of such person, or his surviving wife, as the case may be, such powers and duties shall devolve upon and shall be exercised by the trustee or trustees named in the grant and their successors.

5. The person making such grant may therein reserve the right to alter, amend or modify the terms and conditions thereof and the trusts therein created, in respect to any of the matters mentioned or referred to in paragraphs numbered one to six inclusive of subdivision two hereof; and may also therein reserve the right, during the life of such person, of absolute dominion over the rents, issues and profits of the real property conveyed, without liability to account therefor in any manner whatever, and without any liability over against the estate of such person; and if any such person be married, such person may, in said grant, further provide that if his wife survive him, then such wife, during her life, may have the same dominion over such rents, issues and profits, without liability to account therefor in any manner whatever, and without liability over against the estate of either of the spouses.

6. Any such grant may be executed, acknowledged and recorded in the same manner as is now provided by law for the execution, acknowledging and recording of grants of real property.

7. No suit, action or proceeding shall be commenced or maintained by any person to set aside, annul or affect said conveyance, or to affect the title to the property conveyed, or the right to the possession, or to the rents, issues and profits thereof, unless the same be commenced within two years after the date of filing such grant for record; nor shall any defense be made to any suit, action or proceeding commenced by the trustee or trustees named in said grant or their successors, privies or persons holding under them, which defense involves the legality of said grant, or affects the title to the property thereby conveyed, or the right to the possession or the rents, issues and profits thereof, unless such defense is made in a suit, action or proceeding commenced within two years after such grant shall have been filed for record. (Amended by L. 1920, ch. 169, in effect April 12, 1920.)

Derivation: L. 1892, ch. 516, §§ 1–7; Section 1, as amended by L. 1905, ch. 393, § 1.

§ 116. Executors', fiduciaries' and trustees' investments in certain stocks regulated.

Whenever an executor, trustee, guardian of an infant, committee

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of a lunatic, or other person or persons acting in a fiduciary capacity, or a life tenant, is entitled to receive the proceeds of the sale of any real property sold or to be sold pursuant to the provisions of this article, or pursuant to a judgment in partition, or pursuant to a power of sale contained in a deed or will, and the said property has been or is about to be purchased by a corporation formed or to be formed for such purpose, and all adult beneficiaries and also all adult persons having a vested interest or estate in possession, reversion or remainder in the proceeds of such sale have agreed, or desire to agree that their share of such proceeds shall be invested in the stock and bonds or in either the stock or bonds of such corporation, then the said executor, trustee, guardian, committee or other person or persons acting in a fiduciary capacity, or the life tenant or tenants, may, with the approval of the supreme court, invest his share of the proceeds of such sale in the stock or bonds of such corporation, provided, however, that such corporation shall be prohibited by its certificate of incorporation from investing in any stocks, bonds or other securities other than real estate which are not under the laws of this state a proper subject for the investment of trust funds. The supreme court shall not grant an order permitting such an investment, unless it appears to the satisfaction of such court that a written notice stating the time and place of the application for such leave has been served upon every beneficiary and also upon every person in being having a vested interest or estate in possession, reversion or remainder, in such proceeds at least eight days before the making thereof, if such beneficiary or other person is an adult within the state; or if a minor, lunatic, person of unsound mind, habitual drunkard or absentee, until proof of the service on such beneficiary or other person of such notice as the court or a justice thereof prescribes. The court shall appoint a special guardian for any minor and for any lunatic, person of unsound mind, or habitual drunkard, who shall not be represented by a committee duly appointed. The application must be by petition duly verified, must be made by the executor, trustee, guardian of an infant, committee of a lunatic, or such other person or persons acting in a fiduciary capacity, or a life tenant, entitled to receive the proceeds of such sale, and shall set forth the reasons for such investment and the nature thereof and the peculiar facts which make it proper that the application shall be granted. After taking proof of the facts either before the court or a referee, and

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hearing the parties and fully examining into the matter, the court must make a final order upon the application. In case the application is granted, the final order must authorize the said executor, trustee, guardian of an infant, committee of a lunatic, or other person or persons acting in a fiduciary capacity, or life tenant, so entitled to receive the proceeds of such sale, to make such investment upon such terms and conditions as the court may therein prescribe.

Derivation: Real Property Law, § 94, added by L. 1901, ch. 166, § 1 and amended by L. 1904, ch. 742, § 1.

§ 117. Commissions of trustees.

Any trustee, under a deed of trust to sell real property for the benefit of creditors, shall be entitled to and allowed upon an accounting hereafter had, the same commissions as an assignee for the benefit of creditors.

Derivation: L. 1896, ch. 249, § 1.

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ARTICLE 5.

POWERS.

SECTION 130. Effect of article.
131. Definition of a power.
132. Definitions of grantor, grantee.
133. Division of powers.
134. General power.
135. Special power.
136. Beneficial power.
137. General power in trust.
138. Special power in trust.
139. Capacity to grant a power.
140. How power may be granted.
141. Capacity to take and execute a power.
142. Capacity of married woman to take power.
143. Capacity to take a special and beneficial power.
144. Reservation of a power.
145. Effect of power to revoke.
146. Power to sell in a mortgage.
147. When power is a lien.
148. When power is irrevocable.
149. When estate for life or years is changed into a fee.
150. Certain powers create a fee.
151. When grantee of power has absolute fee.
152. Effect of power to devise in certain cases.
153. When power of disposition absolute.
154. Power subject to condition.
155. Power of life tenant to make leases.
156. Effect of mortgage by grantee.
157. When a trust power is imperative.
158. Distribution when more than one beneficiary.
159. Beneficial power subject to creditors.
160. Execution of power on death of trustee.
161. When power devolves on court.
162. When creditors may compel execution of trust power.
163. Defective execution of trust power.
164. Effect of insolvent assignment.
165. How power must be executed.
166. Execution by survivors.
167. Execution of power to dispose by devise.
168. Execution of power to dispose by grant.
169. When direction by grantor does not render power void.
170. When directions by grantor need not be followed.

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SECTION 171. Nominal conditions may be disregarded.
172. Intent of grantor to be observed.
173. Consent of grantor or third person to execution of power.
174. When all must consent.
175. Omission to recite power.
176. When devise operates as an execution of the power.
177. Disposition not void because too extensive.
178. Computation of term of suspension.
179. Capacity to take under a power.
180. Purchaser under defective execution.
181. Instrument affected by fraud.
182. Sections applicable to trust powers.

§ 130. Effect of article.

Powers, as they existed by law on the thirty-first day of December, eighteen hundred and twenty-nine, are abolished. Hereafter the creation, construction and execution of powers, affecting real property, shall be subject to the provisions of this article; but this article does not extend to a simple power of attorney to convey real property in the name and for the benefit of the owner.

Derivation: Real Property Law, § 110.

§ 131. Definition of a power.

A power is an authority to do an act in relation to real property, or to the creation or revocation of an estate therein, or a charge thereon, which the owner, granting or reserving the power, might himself lawfully perform.

Derivation: Real Property Law, § 111.

§ 132. Definitions of grantor, grantee.

The word "grantor" is used in this article, in connection with a power, as designating the person by whom the power is created, whether by grant or by devise; and the word "grantee" is so used as designating the person in whom the power is vested, whether by grant, devise or reservation.

Derivation: Real Property Law, § 112.

§ 133. Division of powers.

A power, as authorized in this article, is either general or special, and either beneficial or in trust.

Derivation: Real Property Law, § 113.

§ 134. General power.

A power is general, where it authorizes the transfer or incumbrance of a fee, by either a conveyance or a will of, or a charge on, the property embraced in the power, to any grantee whatever.

Derivation: Real Property Law, § 114.

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§ 135. Special power.

A power is special where either:

1. The persons or class of persons to whom the disposition of the property under the power is to be made are designated; or,

2. The power authorizes the transfer or incumbrance, by a conveyance, will or charge, of any estate less than a fee.

Derivation: Real Property Law, § 115.

§ 136. Beneficial power.

A general or special power is beneficial, where no person, other than the grantee, has, by the term of its creation, any interest in its execution. A beneficial power, general or special, other than one of those specified and defined in this article, is void.

Derivation: Real Property Law, § 116.

§ 137. General power in trust.

A general power is in trust, where any person or class of persons, other than the grantee of the power, is designated as entitled to the proceeds, or any portion of the proceeds, or other benefits to result from its execution.

Derivation: Real Property Law, § 117.

§ 138. Special power in trust.

A special power is in trust, where either,

1. The disposition or charge which it authorizes is limited to be made to a person or class of persons, other than the grantee of the power; or,

2. A person or class of persons, other than the grantee, is designated as entitled to any benefit, from the disposition or charge authorized by the power.

Derivation: Real Property Law, § 118.

§ 139. Capacity to grant a power.

A person is not capable of granting a power, who is not, at the same time, capable of transferring an interest in the property to which the power relates.

Derivation: Real Property Law, § 119.

§ 140. How power may be granted.

A power may be granted either:

1. By a suitable clause, contained in an instrument sufficient to pass an estate in the real property, to which the power relates;

2. By a devise contained in a will.

Derivation: Real Property Law, § 120.

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§ 141. Capacity to take and execute a power.

A power may be vested in any person capable in law of holding, but cannot be exercised by a person not capable of transferring real property.

Derivation: Real Property Law, § 121.

§ 142. Capacity of married woman to take power.

A general and beneficial power may be given to a married woman, to dispose, during her marriage, and without concurrence of her husband, of real property conveyed or devised to her in fee.

Derivation: Real Property Law, § 122.

§ 143. Capacity to take a special and beneficial power.

A special and beneficial power may be granted,

1. To a married woman, to dispose, during the marriage, and without the concurrence of her husband, of any estate less than a fee, belonging to her, in the property to which the power relates; or,

2. To a tenant for life, of the real property embraced in the power, to make leases for not more than twenty-one years, and to commence in possession during his life; and such a power is valid to authorize a lease for that period but is void as to the excess.

Derivation: Real Property Law, § 123.

§ 144. Reservation of a power.

The grantor in a conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and a power thus reserved shall be subject to the provisions of this article, in the same manner as if granted to another.

Derivation: Real Property Law, § 124.

§ 145. Effect of power to revoke.

Where the grantor in a conveyance reserves to himself for his own benefit, an absolute power of revocation, he is to be still deemed the absolute owner of the estate conveyed, so far as the rights of creditors and purchasers are concerned.

Derivation: Real Property Law, § 125.

§ 146. Power to sell in a mortgage.

Where a power to sell real property is given to a mortgagee, or to the grantee in any other conveyance intended to secure the payment of money, the power is deemed a part of the security, and vests in, and may be executed by any person who, by assignment or otherwise, becomes entitled to the money so secured to be paid.

Derivation: Real Property Law, § 126.

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§ 147. When power is a lien.

A power is a lien or charge on the real property which it embraces, as against creditors, purchasers and incumbrancers in good faith and without notice, of or from a person having an estate in the property, only from the time the instrument containing the power is duly recorded. As against all other persons, the power is a lien from the time the instrument in which it is contained takes effect.

Derivation: Real Property Law, § 127.

§ 148. When power is irrevocable.

A power, whether beneficial or in trust, is irrevocable, unless an authority to revoke it is granted or reserved in the instrument creating the power.

Derivation: Real Property Law, § 128.

§ 149. When estate for life or years is changed into a fee.

Where an absolute power of disposition not accompanied by a trust, is given to the owner of a particular estate for life or for years, such estate is changed into a fee absolute in respect to the rights of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power of absolute disposition is not executed, and the property is not sold for the satisfaction of debts.

Derivation: Real Property Law, § 129.

§ 150. Certain powers create a fee.

Where a like power of disposition is given to a person to whom no particular estate is limited, such person also takes a fee, subject to any future estates that may be limited thereon, but absolute in respect to creditors, purchasers and incumbrancers.

Derivation: Real Property Law, § 130.

§ 151. When grantee of power has absolute fee.

Where such a power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee.

Derivation: Real Property Law, § 131.

§ 152. Effect of power to devise in certain cases.

Where a general and beneficial power to devise the inheritance is given to a tenant for life, or for years, such tenant is deemed to possess an absolute power of disposition within the meaning of and subject to the provisions of the last three sections.

Derivation: Real Property Law, § 132.

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§ 153. When power of disposition absolute.

Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute.

Derivation: Real Property Law, § 133.

§ 154. Power subject to condition.

A general and beneficial power may be created subject to a condition precedent or subsequent, and until the power becomes absolutely vested it is not subject to any provisions of the last four sections.

Derivation: Real Property Law, § 134.

§ 155. Power of life tenant to make leases.

The power of a tenant for life to make leases is not assignable as a separate interest, but is annexed to his estate, and passes by a grant of such estate unless specially excepted. If so excepted, it is extinguished. Such a power may be released by the tenant to a person entitled to an expectant estate in the property, and shall thereupon be extinguished.

Derivation: Real Property Law, § 135.

§ 156. Effect of mortgage by grantee.

A mortgage executed by a tenant for life, having a power to make leases, does not extinguish or suspend the power; but the power is bound by the mortgage in the same manner as the real property embraced therein, and the effects on the power of such lien by mortgage are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his debt requires; and,

2. That any subsequent estate, created by the owner, in execution of the power, becomes subject to the mortgage as if in terms embraced therein.

Derivation: Real Property Law, § 136.

§ 157. When a trust power is imperative.

A trust power, unless its execution or non-execution is made expressly to depend on the will of the grantee, is imperative, and imposes a duty on the grantee, the performance of which may be compelled for the benefit of the person interested. A trust power does not cease to be imperative where the grantee has the right to select any, and exclude others, of the persons designated as the beneficiaries of the trust.

Derivation: Real Property Law, § 137.

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§ 158. Distribution when more than one beneficiary.

Where a disposition under a power is directed to be made to, among, or between, two or more persons, without any specification of the share or sum to be allotted to each, all the persons designated shall be entitled to an equal proportion; but when the terms of the power import that the estate or fund is to be distributed among the persons so designated, in such manner or proportions as the grantee of the power thinks proper, the grantee may allot the whole to any one or more of such persons in exclusion of the others.

Derivation: Real Property Law, § 138.

§ 159. Beneficial power subject to creditors.

A special and beneficial power is liable to the claims of creditors in the same manner as other interests that can not be reached by execution; and the execution of the power may be adjudged for the benefit of the creditors entitled.

Derivation: Real Property Law, § 139.

§ 160. Execution of power on death of trustee.

If the trustee of a power, with the right of selection, dies leaving the power unexecuted, its execution must be adjudged for the benefit, equally, of all the persons designated as beneficiaries of the trust.

Derivation: Real Property Law, § 140.

§ 161. When power devolves on court.

Where a power in trust is created by will, and the testator has omitted to designate by whom the power is to be executed, its execution devolves on the supreme court.

Derivation: Real Property Law, § 141.

§ 162. When creditors may compel execution of trust power.

The execution, wholly or partly, of a trust power may be adjudged for the benefit of the creditors or assignees of a person entitled as a beneficiary of the trust, to compel its execution, where his interest is assignable.

Derivation: Real Property Law, § 142.

§ 163. Defective execution of trust power.

Where the execution of a power in trust is defective, wholly or partly, under the provisions of this article, its proper execution may be adjudged in favor of the person designated as the beneficiary of the trust.

Derivation: Real Property Law, § 143.

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§ 164. Effect of insolvent assignment.

A beneficial power, and the interest of every person entitled to compel the execution of a trust power, shall pass, respectively, to a trustee or committee of the estate of the person in whom the power or interest is vested, or an assignee for the benefit of creditors.

Derivation: Real Property Law, § 144.

§ 165. How power must be executed.

A power can be executed only by a written instrument, which would be sufficient to pass the estate, or interest, intended to pass under the power, if the person executing the power were the actual owner.

Derivation: Real Property Law, § 145.

§ 166. Execution by survivors.

Where a power is vested in two or more persons, all must unite in its execution; but if before its execution, one or more of such persons dies, the power may be executed by the survivor or survivors.

Derivation: Real Property Law, § 146.

§ 167. Execution of power to dispose by devise.

Where a power to dispose of real property is confined to a disposition by devise or will, the instrument must be a written will, executed as required by law.

Derivation: Real Property Law, § 147.

§ 168. Execution of power to dispose by grant.

Where a power is confined to a disposition by grant, it can not be executed by will, although the disposition is not intended to take effect until after the death of the person executing the power.

Derivation: Real Property Law, § 148.

§ 169. When direction by grantor does not render power void.

Where the grantor of a power has directed or authorized it to be executed by an instrument not sufficient in law to pass the estate, the power is not void, but its execution is to be governed by the provisions of this article.

Derivation: Real Property Law, § 149.

§ 170. When directions by grantor need not be followed.

Where the grantor of a power has directed any formality to be observed in its execution, in addition to those which would be sufficient by law to pass the estate, the observance of such additional formality is not necessary to the valid execution of the power.

Derivation: Real Property Law, § 150.

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§ 171. Nominal conditions may be disregarded.

Where the conditions annexed to a power are merely nominal, and evince no intention of actual benefit to the party to whom, or in whose favor, they are to be performed, they may be wholly disregarded in the execution of the power.

Derivation: Real Property Law, § 151.

§ 172. Intent of grantor to be observed.

Except as provided in this article, the intentions of the grantor of a power as to the manner, time and conditions of its execution must be observed; subject to the power of the supreme court to supply a defective execution as provided in this article.

Derivation: Real Property Law, § 152.

§ 173. Consent of grantor or third person to execution of power.

Where the consent of the grantor or a third person to the execution of a power is requisite, such consent shall be expressed in the instrument by which the power is executed, or in a written certificate. In the first case, the instrument of execution, in the second, the certificate, must be subscribed by the person whose consent is necessary; and to entitle the instrument to be recorded, such signature must be acknowledged or proved and certified in like manner as a deed to be recorded.

Derivation: Real Property Law, § 153.

§ 174. When all must consent.

Where the consent of two or more persons to the execution of a power is requisite, all must consent thereto; but if, before its execution, one or more of them die, the consent of the survivor or survivors is sufficient, unless otherwise prescribed by the terms of the power.

Derivation: Real Property Law, § 154.

§ 175. Omission to recite power.

An instrument executed by the grantee of a power, conveying an estate or creating a charge, which he would have no right to convey or create, except by virtue of the power, shall be deemed a valid execution of the power, although the power be not recited or referred to therein.

Derivation: Real Property Law, § 155.

§ 176. When devise operates as an execution of the power.

Real property embraced in a power to devise passes by a will purporting to convey all the real property of the testator, unless

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the intent that the will is not to operate as an execution of the power, appears, either expressly or by necessary implication.

Derivation: Real Property Law, § 156.

§ 177. Disposition not void because too extensive.

A disposition or charge by virtue of a power is not void on the ground that it is more extensive than was authorized by the power; but an estate or interest so created, so far as embraced by the terms of the power, is valid.

Derivation: Real Property Law, § 157.

§ 178. Computation of term of suspension.

The period during which the absolute right of alienation may be suspended, by an instrument in execution of a power, must be computed, not from the date of such instrument, but from the time of the creation of the power.

Derivation: Real Property Law, § 158.

§ 179. Capacity to take under a power.

An estate or interest can not be given or limited to any person, by an instrument in execution of a power, unless it would have been valid, if given or limited at the time of the creation of the power.

Derivation: Real Property Law, § 159.

§ 180. Purchaser under defective execution.

A purchaser for a valuable consideration, claiming under a defective execution of a power, is entitled to the same relief as a similar purchaser, claiming under a defective conveyance from an actual owner.

Derivation: Real Property Law, § 160.

§ 181. Instrument affected by fraud.

An instrument in execution of a power is affected by fraud, in the same manner as a conveyance or will, executed by an owner or by a trustee.

Derivation: Real Property Law, § 161.

§ 182. Sections applicable to trust powers.

Sections one hundred and eleven to one hundred and thirteen of this chapter, both inclusive, in relation to express trust estates, and the trustee thereof, apply equally to trust powers, however created, and to the grantees of such powers.

Derivation: Real Property Law, § 162.

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ARTICLE 6.

DOWER.

SECTION 190. Dower.
191. Dower in lands exchanged.
192. Dower in lands mortgaged before marriage.
193. Dower in lands mortgaged for purchase-money.
194. Surplus proceeds of sale under purchase-money mortgages.
195. Widow of mortgagee not endowed.
196. When dower barred by misconduct.
197. When dower barred by jointure.
198. When dower barred by pecuniary provisions.
199. When widow to elect between jointure and dower.
200. Election between devise and dower.
201. When deemed to have elected.
202. When provision in lieu of dower is forfeited.
203. Effect of acts of husband.
204. Widow's quarantine.
205. Widow may bequeath a crop.
206. Divorced woman may release dower.
207. Married woman may release dower by attorney.

§ 190. Dower.

A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

Derivation: Real Property Law, § 170.

§ 191. Dower in lands exchanged.

If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken, in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange.

Derivation: Real Property Law, § 171.

§ 192. Dower in lands mortgaged before marriage.

Where a person seized of an estate of inheritance in lands,

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executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person except the mortgagee and those claiming under him.

Derivation: Real Property Law, § 172.

§ 193. Dower in lands mortgaged for purchase-money.

Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands to secure the payment of the purchase-money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

Derivation: Real Property Law, § 173.

§ 194. Surplus proceeds of sale under purchase-money mortgages.

Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life, as her dower.

Derivation: Real Property Law, § 174.

§ 195. Widow of mortgagee not endowed.

A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein, during the marriage.

Derivation: Real Property Law, § 175.

§ 196. When dower barred by misconduct.

In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed.

Derivation: Real Property Law, § 176.

§ 197. When dower barred by jointure.

Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if

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she be a minor, by her joining with her father or guardian in that conveyance.

Derivation: Real Property Law, § 177.

§ 198. When dower barred by pecuniary provisions.

Any pecuniary provision, made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her right or claim of dower in all the lands of her husband.

Derivation: Real Property Law, § 178.

§ 199. When widow to elect between jointure and dower.

If, before the marriage, but without her assent, or, if after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

Derivation: Real Property Law, § 179.

§ 200. Election between devise and dower.

If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of her dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

Derivation: Real Property Law, § 180.

§ 201. When deemed to have elected.

Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for her dower, or commences an action for her dower. But, during such period of one year after the death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, on an affidavit showing the pendency of a proceeding to contest the probate of the will containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator can not be ascertained within the period so limited, or other reasonable cause,

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and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the same manner as a notice of pendency of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

Derivation: Real Property Law, § 181.

§ 202. When provision in lieu of dower is forfeited.

Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representatives of the person in whom they would have vested on the determination of her interest therein, by her death.

Derivation: Real Property Law, § 182.

§ 203. Effect of acts of husband.

An act, deed or conveyance, executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

Derivation: Real Property Law, § 183.

§ 204. Widow's quarantine.

A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

Derivation: Real Property Law, § 184.

§ 205. Widow may bequeath a crop.

A widow may bequeath a crop in the ground of land held by her in dower.

Derivation: Real Property Law, § 185.

§ 206. Divorced woman may release dower.

A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instru-

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ment in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

Derivation: Real Property Law, § 186.

§ 207. Married woman may release dower by attorney.

A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

Derivation: Real Property Law, § 187.

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ARTICLE 7.

LANDLORD AND TENANT.

SECTION 220. Action for use and occupation.
221. Rent due on life leases recoverable.
222. When rent is apportionable.
223. Rights where property or lease is transferred.
224. Attornment by tenant.
225. Notice of action adverse to possession of tenant.
226. Effect of renewal on sub-lease.
227. When tenant may surrender premises.
228. Termination of tenancies at will or by sufferance, by notice.
229. Liability of tenant holding over after giving notice of intention to quit.
230. Liability of tenant holding over after receiving notice to quit. [Repealed.]
231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.
232. Duration of certain agreements in New York.

§ 220. Action for use and occupation.

The landlord may recover a reasonable compensation for the use and occupation of real property, by any person, under an agreement, not made by deed; and a parol lease or other agreement may be used as evidence of the amount to which he is entitled.

Derivation: Real Property Law, § 190.

§ 221. Rent due on life leases recoverable.

Rent due on a lease for life or lives is recoverable by action, as well after as before the death of the person on whose life the rent depends, and in the same manner as rent due on a lease for years.

Derivation: Real Property Law, § 191.

§ 222. When rent is apportionable.

Where a tenant for life, who shall have demised the real property, dies before the first rent day, or between two rent days, his executor or administrator may recover the proportion of rent which accrued to him before his death.

Derivation: Real Property Law, § 192.

§ 223. Rights where property or lease is transferred.

The grantee of leased real property, or of a reversion thereof,

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or of any rent, the devisee or assignee of the lessor of such a lease, or the heir or personal representative of either of them, has the same remedies, by entry, action or otherwise, for the nonperformance of any agreement contained in the assigned lease for the recovery of rent, for the doing of any waste, or for other cause of forfeiture as his grantor or lessor had, or would have had, if the reversion had remained in him. A lessee of real property, his assignee or personal representative, has the same remedy against the lessor, his grantee or assignee, or the representative of either, for the breach of an agreement contained in the lease, that the lessee might have had against his immediate lessor, except a covenant against incumbrances or relating to the title or possession of the premises leased. This section applies as well to a grant or lease in fee, reserving rent, as to a lease for life or for years; but not to a deed of conveyance in fee, made before the ninth day of April, eighteen hundred and five, or after the fourteenth day of April, eighteen hundred and sixty.

Derivation: Real Property Law, § 193.

§ 224. Attornment by tenant.

The attornment of a tenant to a stranger is absolutely void, and does not in any way affect the possession of the landlord unless made either:

1. With the consent of the landlord; or,
2. Pursuant to or in consequence of a judgment, order, or decree of a court of competent jurisdiction; or,
3. To a mortgagee, after the mortgage has become forfeited.

Derivation: Real Property Law, § 194.

§ 225. Notice of action adverse to possession of tenant.

Where a process or summons in an action to recover the real property occupied by him, or the possession thereof, is served upon a tenant, he must forthwith give notice thereof to his landlord; otherwise he forfeits the value of three years' rent of such property, to the landlord or other person of whom he holds.

Derivation: Real Property Law, § 195.

§ 226. Effect of renewal on sub-lease.

The surrender of an under-lease is not requisite to the validity of the surrender of the original lease, where a new lease is given by the chief landlord. Such a surrender and renewal do not impair any right or interest of the chief landlord, his lessee or the holder

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of an under-lease, under the original lease; including the chief landlord's remedy by entry, for the rent or duties secured by the new lease, not exceeding the rent and duties reserved in the original lease surrendered.

Derivation: Real Property Law, § 196.

§ 227. When tenant may surrender premises.

Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenantable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent for the time subsequent to the surrender.

Derivation: Real Property Law, § 197.

§ 228. Termination of tenancies at will or by sufferance, by notice.

A tenancy at will or by sufferance, however created, may be terminated by a written notice of not less than thirty days given in behalf of the landlord, to the tenant, requiring him to remove from the premises; which notice must be served, either by delivering to the tenant or to a person of suitable age and discretion, residing upon the premises, or if neither the tenant nor such a person can be found, by affixing it upon a conspicuous part of the premises, where it may be conveniently read. At the expiration of thirty days after the service of such notice, the landlord may reenter, maintain ejectment, or proceed, in the manner prescribed by law, to remove the tenant, without further or other notice to quit.

Derivation: Real Property Law, § 198.

§ 229. Liability of tenant holding over after giving notice of intention to quit.

If a tenant gives notice of his intention to quit the premises held by him, and does not accordingly deliver up the possession thereof, at the time specified in such notice, he or his personal representatives must, so long as he continue in possession, pay to the landlord, his heirs or assigns, double the rent which he should otherwise have paid, to be recovered at the same time, and in the same manner, as the single rent.

Derivation: Real Property Law, § 199.

§ 230. Liability of tenant holding over after receiving notice to quit.

(Repealed by L. 1920, ch. 138, in effect April 1, 1920.)

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§ 231. Lease, when void; liability of landlord where premises are occupied for unlawful purpose.

1. Whenever the lessee or occupant other than the owner of any building or premises, shall use or occupy the same, or any part thereof, for any illegal trade, manufacture or other business, the lease or agreement for the letting or occupancy of such building or premises shall thereupon become void, and the landlord of such lessee or occupant may enter upon the premises so let or occupied.

2. The owner of real property, knowingly leasing or giving possession of the same to be used or occupied, wholly or partly, for any unlawful trade, manufacture or business, or knowingly permitting the same to be so used, is liable severally, and also jointly with one or more of the tenants or occupants thereof, for any damage resulting from such unlawful use, occupancy, trade, manufacture or business.

Derivation: Real Property Law, § 201; Subdivision 1, L. 1873, ch. 583, § 1.

§ 232. Duration of certain agreements in New York.

An agreement for the occupation of real property in the city of New York, which shall not particularly specify the duration of the occupation, shall be deemed to continue until the first day of October next after the possession commences under the agreement. (Amended by L. 1918, ch. 303; L. 1920, ch. 130, in effect April 1, 1920.)

Derivation: Real Property Law, § 202.

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ARTICLE 8.

CONVEYANCES AND MORTGAGES.

SECTION 240. Definitions and use of terms.
241. Ancient conveyances abolished.
242. When written conveyance necessary.
243. Grant of fee or freehold.
244. When grant takes effect.
245. Estate which passes by grant or devise.
246. Certain deeds declared grants.
247. Conveyance by tenant for life or years of greater estate than possessed.
248. Effect of conveyance where property is leased.
249. Covenants in mortgages.
250. Mortgages on real property inherited or devised.
251. Covenants not implied.
252. Lineal and collateral warranties abolished.
253. Construction of covenants in grants of freehold interests.
254. Construction of clauses and covenants in mortgages and bonds.
255. Construction of grant of appurtenances and of all the rights and estate of grantor.
256. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.
257. Covenants bind representatives of grantor and mortgagor and inure to the benefit of whom.
258. Short forms of deeds and mortgages.
259. When contract to lease or sell void.
260. Effect of grant or mortgage of real property adversely possessed.
261. Maintenance of telegraph or other electric wires raises no presumption of grant.
262. Conveyances with intent to defraud purchasers and incumbrancers void.
263. Conveyances with intent to defraud creditors void.
264. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.
265. Fraudulent intent, question of fact.
266. Rights of purchaser or incumbrancer for valuable consideration protected.
267. Conveyances with power to revoke, determine or alter.
268. Disaffirmance of fraudulent act by executor and others.
269. When remainderman may pay interest owed by life tenant.
270. Powers of courts of equity not abridged.

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SECTION 271. Construction of covenants in mortgages on leases of real property and bonds.
272. Construction of grant of appurtenances, and all of the rights and estate of the mortgagor.
273. What form of mortgage on lease of real property.
274. Transfers and mortgages of interests in decedents' estates.
275. Assignment of mortgage required in lieu of certificate of discharge.
275. Apportionment of rents, annuities, dividends and other payments.

§ 240. Definitions and use of terms.

1. The term "heirs," or other words of inheritance, are not requisite to create or convey an estate in fee.

2. The term "conveyance," as used in this article, includes every instrument, in writing, except a will, by which any estate or interest in real property is created, transferred, assigned or surrendered.

3. Every instrument creating, transferring, assigning or surrendering an estate or interest in real property must be construed according to the intent of the parties, so far as such intent can be gathered from the whole instrument, and is consistent with the rules of law.

4. The terms "estate" and "interest in real property" include every such estate and interest, freehold or chattel, legal or equitable, present or future, vested or contingent.

Derivation: Real Property Law, § 205.

§ 241. Ancient conveyances abolished.

The conveyance of real property by feoffment, with livery or seizin, or big fines, or common recoveries, is abolished.

Derivation: Real Property Law, § 206.

§ 242. When written conveyance necessary.

An estate or interest in real property, other than a lease for a term not exceeding one year, or any trust or power, over or concerning real property, or in any manner relating thereto, cannot be created, granted, assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the person creating, granting, assigning, surrendering or declaring the same, or by his lawful agent, thereunto authorized by writing. But this section does not affect the power of a testator in the disposition of his real property by will; nor prevent any trust from arising or being extinguished by implication or operation of law, nor any declaration of trust from being proved by a writing subscribed by the person declaring the same.

Derivation: Real Property Law, § 207.

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§ 243. Grant of fee or freehold.

A grant in fee or of a freehold estate, must be subscribed by the person from whom the estate or interest conveyed is intended to pass, or by his lawful agent. If not duly acknowledged before its delivery, according to the provisions of this chapter, its execution and delivery must be attested by at least one witness, or, if not so attested, it does not take effect as against a subsequent purchaser or incumbrancer until so acknowledged.

Derivation: Real Property Law, § 208.

§ 244. When grant takes effect.

A grant takes effect, so as to vest the estate or interest intended to be conveyed, only from its delivery; and all the rules of law, now in force, in respect to the delivery of deeds, apply to grants hereafter executed.

Derivation: Real Property Law, § 209.

§ 245. Estate which passes by grant or devise.

A grant or devise of real property passes all the estate or interest of the grantor or testator unless the intent to pass a less estate or interest appears by the express terms of such grant or devise or by necessary implication therefrom. A greater estate or interest does not pass by any grant or conveyance, than the grantor possessed or could lawfully convey, at the time of the delivery of the deed; except that every grant is conclusive against the grantor and his heirs claiming from him by descent, and as against a subsequent purchaser or incumbrancer from such grantor, or from such heirs claiming as such, other than a subsequent purchaser or incumbrancer in good faith and for a valuable consideration, who acquires a superior title by a conveyance that has been first duly recorded.

Derivation: Real Property Law, § 210.

§ 246. Certain deeds declared grants.

Deeds of bargain and sale, and of lease and release, may continue to be used; and are to be deemed grants, subject to all the provisions of law in relation thereto.

Derivation: Real Property Law, § 211.

§ 247. Conveyance by tenant for life or years of greater estate than possessed.

A conveyance made by a tenant for life or years, of a greater estate than he possesses, or can lawfully convey, does not work a

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forfeiture of his estate, but passes to the grantee all the title, estate or interest which such tenant can lawfully convey.

Derivation: Real Property Law, § 212.

§ 248. Effect of conveyance where property is leased.

An attornment to a grantee is not requisite to the validity of a conveyance of real property occupied by a tenant, or of the rents or profits thereof, or any other interest therein. But the payment of rent to a grantor, by his tenant, before notice of the conveyance, binds the grantee; and the tenant is not liable to such grantee, before such notice, for the breach of any condition of the lease.

Derivation: Real Property Law, § 213.

§ 249. Covenants in mortgages.

A mortgage of real property does not imply a covenant for the payment of the sum intended to be secured; and where such covenant is not expressed in the mortgage, or a bond or other separate instrument to secure such payment has not been given, the remedies of the mortgagee are confined to the property mentioned in the mortgage.

Derivation: Real Property Law, § 214.

§ 250. Mortgages on real property inherited or devised.

Where real property, subject to a mortgage executed by any ancestor or testator, descends to an heir, or passes to a devisee, such heir or devisee must satisfy and discharge the mortgage out of his own property, without resorting to the executor or administrator of his ancestor or testator, unless there be an express direction in the will of such testator, that such mortgage be otherwise paid.

Derivation: Real Property Law, § 215.

§ 251. Covenants not implied.

A covenant is not implied in a conveyance of real property, whether the conveyance contains any special covenant or not.

Derivation: Real Property Law, § 216.

§ 252. Lineal and collateral warranties abolished.

Lineal and collateral warranties, with all their incidents, have been abolished; but the heirs and devisees of a person, who has made a covenant or agreement, are answerable thereon, to the extent of the real property descended or devised to them, in the cases and in the manner prescribed by law.

Derivation: Real Property Law, § 217.

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§ 253. Construction of covenants in grants of freehold interests. In grants of freehold interests in real property, the following or similar covenants must be construed as follows:

1. Seizin.—A covenant that the grantor "is seized of the said premises (described) in fee simple, and has good right to convey the same," must be construed as meaning that such grantor, at the time of the execution and delivery of the conveyance is lawfully seized of a good, absolute and indefeasible estate of inheritance in fee simple, of and in all and singular the premises thereby conveyed, with the tenements, hereditaments and appurtenances thereto belonging, and has good right, full power and lawful authority to grant and convey the same by the said conveyance.

2. Quiet enjoyment.—A covenant that the grantee "shall quietly enjoy the said premises," must be construed as meaning that such grantee, his heirs, successors and assigns, shall and may, at all times thereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the said premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction, or disturbance of the grantor, his heirs, successors or assigns, or any person or persons lawfully claiming or to claim the same.

3. Freedom from incumbrances.—A covenant "that the said premises are free from incumbrances," must be construed as meaning that such premises are free, clear, discharged and unincumbered of and from all former and other gifts, grants, titles, charges, estates, judgments, taxes, assessments, liens and incumbrances, of what nature or kind soever.

4. Further assurance.—A covenant that the grantor will "execute or procure any further necessary assurance of the title to said premises," must be construed as meaning that the grantor and his heirs, or successors, and all and every person or persons whomsoever lawfully or equitably deriving any estate, right, title or interest of, in, or to the premises conveyed by, from, under, or in trust for him or them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges of the grantee, his heirs, successors and assigns, make, do, and execute, or cause to be made, done and executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually

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vesting and confirming the premises thereby granted or so intended to be, in and to the grantee, his heirs, successors or assigns forever, as by the grantee, his heirs, successors or assigns, or his or their counsel learned in the law, shall be reasonably advised or required.

5. Warranty of title.— A covenant that the grantor "will forever warrant the title" to the said premises, must be construed as meaning that the grantor and his heirs, or successors, the premises granted, and every part and parcel thereof, with the appurtenances, unto the grantee, his heirs, successors or assigns, against the grantor and his heirs or successors, and against all and every person or persons whomsoever lawfully claiming or to claim the same shall and will warrant and forever defend.

6. Grantor has not incumbered.— A covenant that the grantor "has not done or suffered anything whereby the said premises have been incumbered," must be construed as meaning that the grantor has not made, done, committed, executed, or suffered any act or acts, thing or things whatsoever, whereby or by means whereof, the above mentioned and described premises, or any part or parcel thereof, now are, or at any time hereafter shall or may be impeached, charged or incumbered in any manner or way whatsoever.

Derivation: Real Property Law, § 218.

§ 254. Construction of clauses and covenants in mortgages and bonds.

In mortgages of real property, and in bonds secured thereby or in assignments of mortgages and bonds, or in agreements to extend or to modify the terms of mortgages and bonds, the following or similar clauses and covenants must be construed as follows:

1. Clauses of mortgage. The words "This mortgage, made the ..(A).. day of ..(B).., nineteen hundred and ..(C).., between ..(D).., the mortgagor, and ..(E).., residing at ..(F).., the mortgagee, Witnesseth, that to secure the payment of an indebtedness in the sum of ..(G).. dollars, lawful money of the United States, to be paid on the ..(H).. day of ..(I).., nineteen hundred and ..(J).., with interest thereon to be computed from ..(K).. at the rate of ..(L).. per centum per an-

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num, and to be paid ..(M).., according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee (description)," must be construed as equivalent in meaning to the words "This indenture, made the ..(A^1).. day of ..(B^1).., in the year nineteen hundred and ..(C^1).., between ..(D).., party of the first part, and ..(E^1).., of ..(F^1).., party of the second part.

"Whereas, the said ..(D^1).. is justly indebted to the said party of the second part in the sum of ..(G^1).. dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..(G^1).. dollars, on the ..(H^1).. day of ..(I^1).. nineteen hundred and ..(J^1).. and the interest thereon, to be computed from ..(K^1).., at the rate of ..(L^1).. per centum per annum, and to be paid ..(M^1)..

"It being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any installment of principal, interest, taxes or assessments, as hereinafter provided.

"Now this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises, together with all fixtures and articles of personal property attached to, or used in connection with, the premises. To have and to hold the above granted premises unto the said party of the second part, his heirs and assigns forever. Provided, always, that if the said party of the first part, his heirs, executors or administrators, shall pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned

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in the said condition, that then these presents, and the estate hereby granted, shall cease, determine and be void."

(Explanation: Whatever words are inserted in the blank spaces above marked (A), (B), (C), (D), (E), (F), (G), (H), (I), (J), (K), (L) and (M) respectively, shall be construed as being inserted in the corresponding blank spaces above marked (A^1), (B^1), (C^1), (D^1), (E^1), (F^1), (G^1), (H^1), (I^1), (J^1), (K^1), (L^1) and (M^1) respectively.)

2. Covenant that whole sum shall become due. A covenant "that the whole of the said principal sum shall become due after default in the payment of any installment of principal or of interest for ..... days, or after default in the payment of any tax, water rate or assessment for ..... days after notice and demand," must be construed as meaning that should any default be made in the payment of any installment of principal or any part thereof, or in the payment of the said interest, or of any part thereof, on any day whereon the same is made payable, or should any tax, water rate or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due or payable, and should the said interest remain unpaid and in arrear for the space of ..... days, or such tax, water rate or assessment remain unpaid and in arrear for ..... days after written notice by the mortgagee or obligee, his executors, administrators, successors or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thence forth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, shall, at the option of the said mortgagee or obligee, his executors, administrators, successors or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in any wise notwithstanding.

3. Covenant to pay indebtedness. In default of payment, mortgagee to have power to sell. A covenant "that the mortgagor will pay the indebtedness, as hereinbefore provided," must be construed as meaning that the mortgagor for himself,

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his heirs, executors and administrators or successors, doth covenant and agree to pay to the mortgagee, his executors, administrators, successors and assigns, the principal sum of money secured by said mortgage, and also the interest thereon as provided by said mortgage. And if default shall be made in the payment of the principal sum or the interest that may grow due thereon, or of any part thereof, or in case of any other default, that then and from thenceforth it shall be lawful for the mortgagee, his executors, administrators or successors to enter into and upon all and singular the premises granted, or intended so to be, and to sell and dispose of the same, and all benefit and equity of redemption of the said mortgagor, his heirs, executors, administrators, successors or assigns therein, at public auction, according to the act in such case made and provided, and as the attorney of the mortgagor for that purpose duly authorized, constituted and appointed, to make and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance for the same in fee simple (or otherwise; as the case may be) and out of the money arising from such sale, to retain the principal and interest which shall then be due, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money, if any there shall be, unto the mortgagor, his heirs, executors, administrators, successors or assigns, which sale so to be made shall forever be a perpetual bar both in law and equity against the mortgagor, his heirs, successors and assigns, and against all other persons claiming or to claim the premises, or any part thereof by, from or under him, them or any of them.

4. Mortgagor to keep buildings insured. A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the mortgagor, his heirs, successors and assigns will, during all the time until the money secured by the mortgage shall be fully paid and satisfied, keep the buildings erected on the premises insured against loss or damage by fire, to an amount and in a company to be approved by the mortgagee, and will assign and deliver the policy or policies of such insurance

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to the mortgagee, his executors, administrators, successors or assigns, so and in such manner and form that he and they shall at all time and times, until the full payment of said moneys, have and hold the said policy or policies as a collateral and further security for the payment of said money, and in default of so doing, that the mortgagee or his executors, administrators, successors or assigns, may make such insurance from year to year, in a sum not exceeding the principal sum for the purposes aforesaid, and pay the premium or premiums therefor, and that the mortgagor will pay to the mortgagee, his executors, administrators, successors or assigns, such premium or premiums so paid, with interest from the time of payment, on demand, and that the same shall be deemed to be secured by the mortgage, and shall be collectible thereupon and thereby in like manner as the principal moneys, and in default of such payment by the mortgagor, his heirs, executors, administrators, successors or assigns, or of assignment and delivery of policies as aforesaid the whole of the principal sum and interest secured by the mortgage shall, at the option of the mortgagee, his executors, administrators, successors or assigns, immediately become due and payable, and that should the holder of the mortgage by reason of such insurance against loss by fire receive any sum or sums of money for damage by fire, such amount may be retained and applied by the holder of the mortgage toward payment of the sum secured by the mortgage, or the same may be paid over either wholly or in part to the mortgagor or to the heirs (or successors) or assigns of the mortgagor for the repair of said buildings or for * he erection of new buildings in their place, or for any other purpose or object satisfactory to the holder of the mortgage, and if the mortgagee receive and retain insurance money for damage by fire to said premises, the lien of the mortgage shall be affected only by a reduction of the amount of said lien by the amount of such insurance money received and retained by said mortgagee.

5. Mortgagor to warrant title. A covenant "that the mortgagor warrants the title to the premises," must be construed as meaning that the mortgagor warrants that he has good title to said premises and has a right to mortgage the same and that the mort-

* So in original.

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gagor shall and will make, execute, acknowledge and deliver in due form of law, all such further or other deeds or assurances as may at any time hereafter be reasonably desired or required for the more fully and effectually conveying the premises by the mortgage described, and thereby granted or intended so to be, unto the said mortgagee, his executors, administrators, successors or assigns, for the purpose aforesaid, and unto all and every person or persons, corporation or corporations, deriving any estate, right, title or interest therein, under the said indenture of mortgage, or the power of sale therein contained, and the said granted premises against the said mortgagor, and all persons claiming through him will warrant and defend.

6. Mortgagor to pay all taxes, assessments or water rates. A covenant "that the mortgagor will pay all taxes, assessments or water rates and in default thereof, the mortgagee may pay the same" must be construed as meaning that until the amount hereby secured is paid, the mortgagor will pay all taxes, assessments and water rates which may be assessed or become liens on said premises, and in default thereof the holder of this mortgage may pay the same, and the mortgagor will repay the same with interest, and the same shall be liens on said premises and secured by the mortgage.

7. Statement of amount due. A covenant "that the mortgagor within ..... days upon request in person or within ..... days upon request by mail will furnish a statement of the amount due on this mortgage" must be construed as meaning that the mortgagor, and any subsequent owner of the premises described herein upon request, made either personally * of by mail, shall certify, by a writing duly acknowledged, to the mortgagee or to any proposed assignee of this mortgage, the amount of principal and interest then owing on this mortgage and whether any offsets or defenses exist against the mortgage debt; upon failure to furnish such certificate after the expiration of ..... days in case the request is made personally, or after the expiration of ..... days after the mailing of such request in case the request is made by mail, this mortgage shall become due at the option of the holder thereof.

* So in original.

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8. Notice and demand. A covenant "that notice and demand or request may be made in writing and may be served in person or by mail" must be construed as meaning that every provision for notice and demand or request shall be deemed fulfilled by written notice and demand or request personally served on one or more of the persons who shall at the time hold the record title to the premises, or on their heirs or successors, or mailed by depositing it in any post-office station or letter-box, enclosed in a postpaid envelope addressed to such person or persons, or their heirs or successors, at his, their or its address to the mortgagee last known.

9. Power of attorney to assignee. The word "assign" or other words of assignment, when contained in an assignment of a mortgage and bond, must be construed as having included in their meaning that the assignor does thereby make, constitute and appoint the assignee the true and lawful attorney, irrevocable, of the assignor, in the name of the assignor, or otherwise, but at the proper costs and charges of the assignee, to have, use and take all lawful ways and means for the recovery of the money and interest secured by the said mortgage and bond, and in case of payment to discharge the same as fully as the assignor might or could do if the assignment were not made. (Amended by L. 1917, ch. 682, in effect Sept. 1, 1917.)

Derivation. Real Property Law, § 219, as amended by L. 1897, ch. 277, § 1.

§ 255. Construction of grant of appurtenances and of all the rights and estates of grantor.

In any grant or mortgage of freehold interests in real estate, the words, "together with the appurtenances and all the estate and rights of the grantor in and to said premises," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, dower and right of dower, curtesy and right of curtesy, property, possession, claim and demand whatsoever, both in law and in equity, of the said grantor of, in and to the said

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granted premises and every part and parcel thereof, with the appurtenances.

Derivation: Real Property Law, § 220.

§ 256. Construction of grant in executor's or trustee's deed of appurtenances, and of the estate of testator and grantor.

In any deed by an executor of, or trustee under a will, the words "together with the appurtenances and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein which said grantor has or has power to convey or dispose of, whether individually or by virtue of said will or otherwise," must be construed as meaning, together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property, possession, claim and demand whasoever, both in law and equity, which the said testator had in his lifetime, and at the time of his decease, or which the said grantor has or has power to convey or dispose of, whether individually or by virtue of the said last will and testament or otherwise, of, in and to the said granted premises, and every part and parcel thereof, with the appurtenances.

Derivation: Real Property Law, § 221.

§ 257. Covenants bind representatives of grantor and mortgagor and inure to the benefit of whom.

All covenants contained in any grant or mortgage of real estate bind the heirs, executors, administrators, successors and assigns, of the grantor or mortgagor, and inure to the benefit of the heirs, executors, administrators, successors and assigns of the grantee or mortgagee in the same manner and to the same extent, and with like effect as if such heirs, executors, administrators, successors and assigns were so named in such covenants, unless otherwise in said grant or mortgage expressly provided.

Derivation: Real Property Law, § 222.

§ 258. Short forms of deeds and mortgages.

The use of the following forms of instruments for the con-

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veyance and mortgage of real property is lawful, but this section does not prevent or invalidate the use of other forms:

SCHEDULE A.

DEED WITH FULL COVENANTS.

Statutory Form A. (Individual)

This indenture, made the ..... day of ..... nineteen hundred and ....., between ..... (insert residence) party of the first part, and ..... (insert residence) party of the second part,

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ... and assigns forever. And said ..... covenants as follows:

First. That said ..... is seized of said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That said ..... will forever warrant the title to said premises.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE B.

DEED WITH FULL COVENANTS.

Statutory Form AA. (Corporation)

This indenture, made the ..... day of ....., nineteen

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hundred and ....., between ..... a corporation organized under the laws of ....., party of the first part, and ..... (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ... and assigns forever, all ..... (description) together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ... and assigns forever. And the party of the first part covenants as follows:

First. That the party of the first part is seized of the said premises in fee simple, and has good right to convey the same;

Second. That the party of the second part shall quietly enjoy the said premises;

Third. That the said premises are free from incumbrances;

Fourth. That the party of the first part will execute or procure any further necessary assurance of the title to said premises;

Fifth. That the party of the first part will forever warrant the title to said premises.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE C.

BARGAIN AND SALE DEED.

Statutory Form B. Without Covenant against Grantor.

(Individual)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence) party of the first part, and ....., (insert residence) party of the second part:

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Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ... and assigns forever, all .... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the above granted premises unto the party of the second part, ... and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE D.

BARGAIN AND SALE DEED.

Statutory Form BB. Without Covenant against Grantor.

(Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., a corporation organized under the laws of ....., party of the first part, and ..... (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ... and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

To have and to hold the premises herein granted unto the party of the second part, ... and assigns forever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed, and these presents to be signed by its duly authorized officer the day and year first above written.

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SCHEDULE E.

BARGAIN AND SALE DEED.

Statutory Form C. With Covenant against Grantor. (Individual)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence), party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, his heirs and assigns forever, all ..... (description), together with the appurtenance and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever. And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE F.

BARGAIN AND SALE DEED.

Statutory Form CC. With Covenant against Grantor. (Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between .....
a corporation organized under the laws of ....., party of the first part, and .....,
(insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ...
and assigns forever, all .....

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(description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, ... and assigns forever. And the party of the first part covenants that it has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer the day and year first above written.

SCHEDULE G.

QUITCLAIM DEED.

Statutory Form D. (Individual)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ..... (insert residence), party of the first part, and ....., (insert residence), party of the second part:

Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release, and quitclaim unto the party of the second part, ... and assigns forever, all (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, ... and assigns forever.

In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE H.

QUITCLAIM DEED.

Statutory Form DD. (Corporation)

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., a corporation organized under the laws of ....., party of the first part, and ..... (insert residence), party of the second part:

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Witnesseth, that the party of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby remise, release and quitclaim unto the party of the second part, his heirs and assigns forever, all ..... (description), together with the appurtenances and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the premises herein granted unto the party of the second part, his heirs and assigns forever.

In witness whereof, the party of the first part has caused its corporate seal to be hereunto affixed and these presents to be signed by its duly authorized officer of the day and year first above written.

SCHEDULE I.

EXECUTOR'S DEED.

Statutory Form E.

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., as executor of ..... the last will and testament of ....., late of ....., deceased, party of the first part, and ..... (insert residence), party of the second part:

Witnesseth, that the party of the first part, by virtue of the power and authority to him given in and by the said last will and testament, and in consideration of ..... dollars, lawful money of the United States, paid by the party of the second part, does hereby grant and release unto the party of the second part, ... his heirs and assigns forever, all ..... (description), together with the appurtenances, and also all the estate which the said testator had at the time of his decease in said premises, and also the estate therein, which the party of the first part has or has power to convey or dispose of, whether individually, or by virtue of said will or otherwise.

To have and to hold the premises herein granted unto the party of the second part, ... and assigns forever.

And the party of the first part covenants that he has not done or suffered anything whereby the said premises have been incumbered in any way whatever.

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In witness whereof, the party of the first part has hereunto set his hand and seal the day and year first above written.

In presence of:

SCHEDULE J.

REFEREE'S DEED IN FORECLOSURE.

Statutory Form F.

This deed, made the ..... day of ....., nineteen hundred and ....., between ....., referee, duly appointed in the action hereinafter mentioned, grantor, and ..... (insert residence), grantee:

Witnesseth, that the grantor, the referee appointed in an action between ....., plaintiffs, and ....., defendants, foreclosing a mortgage recorded on the ..... day of ..... in the office of the ..... of the county of ..... in liber ..... of mortgages, at page ....., in pursuance of a judgment entered at a special term of the ....., on the ..... day of ....., and in consideration of ..... dollars paid by the grantee, being the highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee, all (description),

To have and to hold the premises herein granted unto the grantee, ... and assigns forever.

In witness whereof, the grantor has hereunto set his hand and seal.

In presence of:

SCHEDULE K.

REFEREE'S DEED IN PARTITION.

Statutory Form G.

This deed, made the ..... day of ....., nineteen hundred and ....., between ....., referee duly appointed in the action hereinafter mentioned, grantor, and ....., (insert residence), grantee:

Witnesseth, that the grantor, the referee appointed in an action in partition between ....., plaintiffs, and ....., defendants, in pursuance of a judgment entered at a special term of the ....., on the ..... day of ....., and in consideration of ..... dollars paid by the grantee, being the

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highest sum bid at the sale under said judgment, does hereby grant and convey unto the grantee all (description),

To have and to hold the premises herein granted unto the grantee, ... and assigns forever.

In witness whereof, the grantor has hereunto set his hand and seal.

In presence of:

SCHEDULE L.

ASSIGNMENT OF LEASE.

Statutory Form H.

Know that ....., assignor, in consideration of ..... dollars, paid by ....., assignee, hereby assigns unto the assignee, a certain lease made by ....., to ....., dated the ..... day of ....., and recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of conveyances, at page ....., covering premises ....., together with the premises therein described, and the buildings thereon, with the appurtenances,

To have and to hold the same unto the assignee, ... and assigns, from the ..... day of ....., nineteen hundred and ....., for all the rest of ..... years mentioned in the said lease, subject to the rents, covenants, conditions and provisos therein also mentioned.

And the assignor hereby covenants that the said assigned premises are free from incumbrances.

In witness whereof, the assignor has hereunto set his hand and seal this ..... day of ....., nineteen hundred and .....

In presence of:

SCHEDULE M.

MORTGAGE.

Statutory Form M.

This mortgage, made the ..... day of ....., nineteen hundred and ....., between ....., (insert residence) the mortgagor, and ..... (insert residence), the mortgagee.

Witnesseth, that to secure the payment of an indebtedness in the sum of ..... dollars, lawful money of the United States, to be paid on the ..... day of ....., nineteen hundred and

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....., with interest thereon to be computed from ....., at the rate of ..... per centum per annum, and to be paid ....., according to a certain bond or obligation bearing even date herewith, the mortgagor hereby mortgages to the mortgagee (description).

And the mortgagor covenants with the mortgagee as follows:

1. That the mortgagor will pay the indebtedness as hereinbefore provided.

2. That the mortgagor will keep the buildings on the premises insured against loss by fire for the benefit of the mortgagee.

3. That no building on the premises shall be removed or demolished without the consent of the mortgagee.

4. That the whole of said principal sum shall become due after default in the payment of any installment of principal or of interest for ..... days, or after default in the payment of any tax, water rate or assessment for ..... days after notice and demand.

5. That the holder of this mortgage, in any action to foreclose it, shall be entitled to the appointment of a receiver.

6. That the mortgagor will pay all taxes, assessments or water rates, and in default thereof, the mortgagee may pay the same.

7. That the mortgagor within ..... days upon request in person or within ..... days upon request by mail will furnish a statement of the amount due on this mortgage.

8. That notice and demand or request may be in writing and may be served in person or by mail.

9. That the mortgagor warrants the title to the premises.

In witness whereof this mortgage has been duly executed by the mortgagor.

In presence of:

SCHEDULE N.

ASSIGNMENT OF MORTGAGE.

Statutory Form I. Without Covenant.

Know that ....., assignor, in consideration of ..... dollars, paid by ....., assignee, hereby assigns unto the assignee, a certain mortgage made by ....., given to secure payment of the sum of ..... dollars and interest, dated the

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..... day of ....., recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of mortgages, at page ....., covering premises ....., together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest.

To have and to hold the same unto the assignee, and to the successors, legal representatives and assigns of the assignee forever.

In witness whereof, the assignor has hereunto set his hand and seal this ..... day of ....., nineteen hundred and .....

In presence of:

SCHEDULE O.

ASSIGNMENT OF MORTGAGE.

Statutory Form J. With Covenant.

Know that ....., assignor, in consideration of ..... dollars, paid by ....., assignee, hereby assigns unto the assignee, a certain mortgage made by ....., given to secure payment of the sum of ..... dollars and interest, dated the ..... day of ....., recorded on the ..... day of ....., in the office of the ..... of the county of ....., in liber ..... of mortgages, at page ....., covering premises ....., together with the bond or obligation described in said mortgage, and the moneys due and to grow due thereon with the interest,

To have and to hold the same unto the assignee, and to the successors, legal representatives and assigns of the assignee forever.

And the assignee covenants that there is now owing upon said mortgage, without offset or defense of any kind, the principal sum of ..... dollars, with interest thereon at ..... per centum per annum from the ..... day of ....., nineteen hundred and .....

In witness whereof, the assignor has hereunto set his hand and seal this ..... day of ....., nineteen hundred and .....

In presence of:

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SCHEDULE P.

RELEASE OF PART OF MORTGAGED PREMISES.

Statutory Form K.

This indenture, made the ..... day of ....., nineteen hundred and ....., between ....., party of the first part, and ....., party of the second part,

Whereas, ... by indenture of mortgage, bearing date the ..... day of ....., nineteen hundred and ....., recorded in the office of the ..... of the county of ....., in liber ..... of mortgages, of section ....., page ....., on the ..... day of ....., nineteen hundred and ....., for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements of which the lands thereinafter described are part, unto .....,

And whereas, the party of the first part, at the request of the party of the second part, has agreed to give up and surrender the lands hereinafter described unto the party of the second part, and to hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage,

Now this indenture witnesseth, that the party of the first part, in pursuance of said agreement, and in consideration of ..... dollars, lawful money of the United States, ... paid by the party of the second part, does grant, release and quitclaim unto the party of the second part, all that part of said mortgaged lands described as follows: ..... (description),

Together with the hereditaments and appurtenances thereunto belonging, and all the right, title and interest of the party of the first part, of, in and to the same, to the intent that the lands hereby conveyed may be discharged from said mortgage, and that the rest of the land in said mortgage specified may remain to the party of the first part as heretofore,

To have and to hold the lands and premises hereby released and conveyed to the party of the second part, ... and assigns, to ..... and their own proper use, benefit and behoof forever, free, clear and discharged of and from all lien and claim under and by virtue of the indenture of mortgage aforesaid.

In witness whereof, the party of the first part has signed and sealed these presents the day and year first above written.

In presence of:

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SCHEDULE Q.

SATISFACTION OF MORTGAGE.

Statutory Form L.

Know all men by these presents, that ..... do hereby certify that a certain indenture of mortgage, bearing date the ..... day of ....., nineteen hundred and ....., made and executed by ....., to secure payment of the principal sum of ..... dollars and interest, and duly recorded in the office of the ..... of the county of ....., in liber ..... of mortgages, of section ....., page ....., on the ..... day of ....., nineteen hundred and ....., is paid, and do hereby consent that the same be discharged of record.

Dated the ..... day of ....., nineteen hundred and .....

In presence of:

(Amended by L. 1917, ch. 681, in effect Sept. 1, 1917.)

Derivation: Real Property Law, § 223, as amended by L. 1897, ch. 277, § 2.

§ 259. When contract to lease or sell void.

A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void, unless the contract, or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the lessor or grantor, or by his lawfully authorized agent.

Derivation: Real Property Law, § 224.

§ 260. Effect of grant or mortgage of real property adversely possessed.

A grant of real property is absolutely void, if at the time of the delivery thereof, such property is in actual possession of a person claiming under a title adverse to that of the grantor; but such possession does not prevent the mortgaging of such property, and such mortgage, if duly recorded, binds the property from the time the possession thereof is recovered by the mortgagor or his representatives, and has preference over any judgment or other instrument, subsequent to the recording thereof; and if there are two or more such mortgages, they severally have preference according to the time of recording thereof, respectively. The provisions of this section do not apply to a grant of such property made to the people of the state of New York, nor to a person where the title

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granted to such person shall thereafter, by grant or mesne conveyance, become vested in said people. (Amended by L. 1909, ch. 481, and L. 1910, ch. 628, in effect June 23, 1910.)

Derivation: Real Property Law, § 225. **Amended by L. 1909, ch. 481.** In effect May 26, 1909.

§ 261. Maintenance of telegraph or other electric wires raises no presumption of grant.

Whenever any wire or cable used for any telegraph, telephone, electric light or other electric purpose, or for the purpose of communication otherwise than by the aid of electricity, is or shall be attached to, or does or shall extend upon or over any building or land, no lapse of time whatever shall raise a presumption of any grant of, or justify a prescription of any perpetual right to, such attachment or extension.

Derivation: L. 1886, ch. 40, § 1.

§ 262. Conveyances with intent to defraud purchasers and incumbrancers void.

A conveyance of an estate or interest in real property, or the rents and profits thereof, and every charge thereon, made or created with intent to defraud prior or subsequent purchasers or incumbrancers, for a valuable consideration, of the same real property, rents or profits, is void as against such purchasers and incumbrancers. Such a conveyance or charge shall not be deemed fraudulent in favor of a subsequent purchaser or incumbrancer, who, at the time of his purchase or incumbrance, has actual or legal notice thereof, unless it appears that the grantee in the conveyance, or the person to be benefited by the charge, was privy to the fraud intended.

Derivation: Real Property Law, § 226.

§ 263. Conveyances with intent to defraud creditors void.

A conveyance or assignment in writing or otherwise, of an estate, interest, or existing trust in real property, or the rents or profits issuing therefrom, or a charge on real property, or on the rents or profits thereof, made with the intent to hinder, delay or defraud creditors, or other persons, of their lawful suits, damages, forfeitures, debts or demands, or a bond or other evidence of debt given, suit commenced or decree or judgment suffered, with the like intent, is void as against every person so hindered, delayed or defrauded.

Derivation: Real Property Law, § 227.

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§ 264. Conveyances void as to creditors, purchasers and incumbrancers, void as to heirs and assigns.

A conveyance, charge, instrument or proceeding, declared by this article to be void as against creditors, purchasers or incumbrancers, is equally void as against their heirs, successors, personal representatives or assigns.

Derivation: Real Property Law, § 228.

§ 265. Fraudulent intent, question of fact.

The question of fraudulent intent in a case arising under this article, shall be deemed a question of fact and not of law; and a conveyance or charge shall not be adjudged fraudulent as against creditors, purchasers or incumbrancers, solely on the ground that it was not founded on a valuable consideration.

Derivation: Real Property Law, § 229.

§ 266. Rights of purchaser or incumbrancer for valuable consideration protected.

This article does not in any manner affect or impair the title of a purchaser or incumbrancer for a valuable consideration, unless it appears that he had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

Derivation: Real Property Law, § 230.

§ 267. Conveyances with power to revoke, determine or alter.

A conveyance of, or charge on, an estate or interest in real property, containing a provision for the revocation, determination or alteration of the estate or interest, or any part thereof, at the will of the grantor, is void, as against subsequent purchasers and incumbrancers, from the grantor, for a valuable consideration, of any estate or interest so liable to be revoked or determined, although the same be not expressly revoked, determined or altered by the grantor, by virtue of the power reserved or expressed in the prior conveyance or charge. Where a power to revoke a conveyance of real property or the rents and profits thereof, and to reconvey the same, is given to any person, other than the grantor in such conveyance, and such person thereafter conveys the same real property, rents or profits to a purchaser or incumbrancer for a valuable consideration, such subsequent conveyance is valid, in the same manner and to the same extent as if the power of revocation were recited therein, and the intent to revoke the former conveyance expressly declared. If a conveyance to a purchaser or incumbrancer,

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under this section, be made before the person making it is entitled to execute his power of revocation, it is nevertheless valid, from the time the power of revocation actually vests in such person, in the same manner, and to the same extent, as if then made.

Derivation: Real Property Law, § 231.

§ 268. Disaffirmance of fraudulent act by executor and others. An executor, administrator, receiver, assignee or other trustee, may, for the benefit of creditors, or of others interested in real property held in trust, disaffirm, treat as void and resist any act done or transfer or agreement made in fraud of the rights of any creditor, including himself, interested in such estate or property; and a person who fraudulently receives, takes, or in any manner interferes with the real property of a deceased person, or an insolvent corporation, association, partnership, or individual, is liable to such executor, administrator, receiver or other trustee for the same, or the value thereof, and for all damages caused by such act to the trust estate. A creditor of a deceased insolvent debtor, having a claim or demand exceeding one hundred dollars against such deceased, may, for the benefit of creditors or others interested in the real property of such deceased, disaffirm, treat as void, and resist any act done or conveyance, transfer or agreement made by such deceased in fraud of the rights of any creditor, including himself, and may maintain an action to set aside such act, conveyance, transfer or agreement, without having first obtained a judgment on such claim or demand; but the same, if disputed, may be established on the trial. The judgment in such action may provide for the sale of the premises or property involved, when a conveyance or transfer thereof is set aside, and the proceeds thereof be brought into court or paid into the proper surrogate's court to be administered according to law.

Derivation: Real Property Law, § 232.

§ 269. When remainderman may pay interest owed by life tenant. Whenever real property held by any person for life is incumbered by mortgage or other lien, the interest on which should be paid by the life tenant, and such life tenant neglects or refuses to pay such interest, the remainderman may pay such interest, and recover the amount thereof, together with interest thereon from the time of such payment, of the life tenant.

Derivation: Real Property Law, § 233.

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§ 270. Powers of courts of equity not abridged.

Nothing contained in this article abridges the powers of courts of equity to compel the specific performance of agreements in cases of part performance.

Derivation: Real Property Law, § 234.

§ 271. Construction of covenants in mortgages on leases of real property and bonds.

In mortgages on leases of real property and in bonds secured thereby, the following or similar covenants or agreements must be construed as follows:

1. In default of payment, mortgagee to have power to sell.—A covenant that the mortgagor "will pay the indebtedness, as provided in the mortgage, and if default be made in the payment of any part thereof, the mortgagee or obligee shall have power to sell the premises therein described, according to law," must be construed as meaning that the mortgagor or obligor shall well and truly pay unto the mortgagee or obligee the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, according to the condition of the said bond or obligation. And if default shall be made in the payment of the said sum of money therein mentioned, or in the interest which shall accrue thereon, or of any part of either, that then and from thenceforth it shall be lawful for the said mortgagee or obligee, his legal representative or assigns, to sell, transfer and set over, all the rest, residue and remainder of the said term of years then yet to come, and all other, the right, title and interest of the said mortgagor or obligor of, in and to the same, at public auction, according to the act in such case made and provided. And as the attorney of the said mortgagor or obligor for that purpose by these presents duly authorized, constituted and appointed, to make, seal, execute and deliver to the purchaser or purchasers thereof, a good and sufficient assignment, transfer or other conveyance in the law, for the said premises, with the appurtenances; and out of the money arising from such sale, to retain the principal and interest which shall then be due on the said bond or obligation, together with the costs and charges of advertisement and sale of the said premises, rendering the overplus of the purchase-money (if any there shall be) unto the said mortgagor or obligor, his legal representatives or assigns; which sale, so to be made, shall forever be a perpetual bar, both in law and equity, against the said mortgagor or obligor, and

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against all persons claiming or to claim the premises or any part thereof, by, from or under him or them, or any of them.

2. Mortgagor to keep buildings insured.—A covenant "that the mortgagor will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee," must be construed as meaning that the said mortgagor or obligor shall and will keep the buildings erected and to be erected upon the lands above conveyed, insured against loss and damage by fire, by insurance, and in an amount approved by the said mortgagee or obligee and his assigns, and either assign the policy and certificates thereof or have such insurance made payable to the said mortgagee or obligee or his assigns, and in default thereof it shall be lawful for the said mortgagee or obligee and his assigns to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, and payable on demand, with legal interest.

3. Mortgagor to pay rent and charges on premises.—A covenant that the mortgagor "will pay the rent and other charges mentioned in and made payable by said indenture of lease within ..... days after said rent or charges are payable," must be construed as meaning that the said mortgagor or obligor and his legal representatives and assigns, will pay or cause to be paid, and discharge all rent and rents mentioned in and made payable by the indenture of lease aforesaid, and also all taxes, assessments or other charges that now are a lien, or hereafter shall or may be levied, assessed or imposed and become a lien upon the premises above described or any part thereof; and in default thereof, for the space of ..... after such taxes or assessments or ..... after the said rent or rents, or any of them shall have become due and payable by the terms of said lease or by law, then and in each and every such case the said mortgagee or obligee, his legal representatives or assigns may, at option, and without notice, pay such rent or rents, taxes, assessments or other charges and expenses, and the amount so paid, and interest thereon, from the time of such payment, shall forthwith be due and payable from the said mortgagor or obligor, his legal representatives or assigns, to the said mortgagee or obligee, his legal representatives or assigns, and shall

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be deemed to be secured by these presents, and shall be *collectable in the same manner, and at the same time, and upon the same conditions as the interest then next maturing upon the principal sum hereinbefore mentioned.

4. Agreement that whole sum shall become due.—The words "And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of said mortgagee or obligee after default in the payment of any instalment of principal or after default in the payment of interest for ..... days, or after default in the payment of any rent or other charge made payable by said indenture of lease for ..... days, or after default in the payment of any tax or assessment for ..... days after notice and demand," must be construed as meaning that should any default be made in the payment of any instalment of principal or any part thereof, or of said interest or any part thereof, or of any rent or other charge made payable by said indenture or lease, on any day whereon the same is made payable, or should any tax or assessment, which now is or may be hereafter imposed upon the premises hereinafter described, become due and payable, and should the said interest, rent or other charge aforesaid, remain unpaid and in arrear for the space of ..... days, or such tax or assessment remain unpaid and in arrear for ..... days after written notice by the mortgagee or obligee, his executors, administrators or assigns, that such tax or assessment is unpaid, and demand for the payment thereof, then and from thenceforth, that is to say, after the lapse of either one of said periods, as the case may be, the aforesaid principal sum, with all arrearage of interest thereon, rent and other charges paid by the mortgagee or obligee, shall, at the option of the said mortgagee or obligee, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything thereinbefore contained to the contrary thereof in anywise notwithstanding.

Derivation: Real Property Law, § 235, added by L. 1898, ch. 338.

§ 272. Construction of grant of appurtenances, and all of the rights and estate of the mortgagor.

In any mortgage on a lease of real property the words "together with the appurtenances and all the estate and rights of the

* So in original.

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part ..... of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease," must be construed as meaning, together with all and singular the edifices, buildings, rights, members, privileges and appurtenances thereunto belonging or in anywise appertaining; and also all the estate, right, title, interest, term of years yet to come and unexpired, property, possession, claim and demand whatsoever, as well in law as in equity, of the said mortgagor or obligor, of, in and to the said demised premises, and every part and parcel thereof, with the appurtenances; and also the said indenture of lease, and the renewal therein provided for, and every clause, article and condition therein expressed and contained.

Derivation: Real Property Law, § 236, added by L. 1898, ch. 338.

§ 273. What form of mortgage on lease of real property. The use of the following form of instrument for mortgages on leases of real property is lawful, but this section does not prevent or invalidate the use of other forms.

SCHEDULE D.

Mortgage on Lease of Real Property.

This indenture, made the ..... day of ....., in the year one thousand .... hundred and ....., between ..... of (insert residence) of the first part and ..... of (insert residence) of the second part; whereas ..... did, by a certain indenture of lease, bearing date the ..... day of ....., in the year one thousand nine hundred and ....., demise, lease and to farm let unto ..... and to ..... executors, administrators and assigns, all and singular the premises herein after mentioned and described, together with their appurtenances; to have and to hold the same unto the said ..... and to ..... executors, administrators and assigns, for and during and until the full end and term of ..... years, from the ..... day of ....., one thousand nine hundred and ....., fully to be complete and ended, yielding and paying therefor unto the said ..... and to ..... or assigns, the yearly rent or sum of .....

And whereas, the said part .... of the first part justly indebted to the said part .... of the second part, in the sum of.....

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..... lawful money of the United States of America, secured to be paid by ..... certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of ..... on the ..... day of ....., nineteen hundred and ..... and the interest thereon to be computed from ..... at the rate of ..... per centum per annum and to be paid .....

It being thereby expressly agreed that the whole of the said principal sum shall become due at the option of the mortgagee or obligee after default in the payment of interest, taxes or assessments or rents as hereinafter provided.

Now this indenture witnesseth that the said part .... of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of the sum of one dollar, paid by the said part .... of the second part, the receipt whereof is hereby acknowledged, doth grant and release, assign, transfer and set over unto said part .... of the second part, and to his heirs (or successors) and assigns forever.

(Description.)

Together with the appurtenances and all the estate and rights of the part .... of the first part of, in and to said premises under and by virtue of the aforesaid indenture of lease.

To have and hold the said indenture of lease and renewal, and the above granted premises, unto the said part .... of the second part, his heirs and assigns, for and during all the rest, residue and remainder of the said term of years yet to come and unexpired, in said indenture of lease and in the renewals therein provided for; subject, nevertheless, to the rents, covenants, conditions and provisions in the said indenture of lease mentioned.

Provided always that if the said part ....of the first part shall pay unto the said part .... of the second part, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted, shall cease, determine and be void.

And the said part.... of the first part covenant.. with the said part.... of the second part as follows:

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First. That the part.... of the first part will pay the indebtedness as hereinbefore provided.

And if default shall be made in the payment of any part thereof the said part.... of the second part shall have power to sell the premises therein described according to law.

Second. That the said premises now are free and clear of all incumbrances whatsoever, and that ..... ha... good right and lawful authority to convey the same in manner and form hereby conveyed.

Third. That the part... of the first part will keep the buildings on the said premises insured against loss by fire, for the benefit of the mortgagee.

Fourth. That the part ... of the first part will pay the rents and other charges mentioned in and made payable by said indenture of lease within ..... days after said rent or charges are payable.

Fifth. And it is hereby expressly agreed that the whole of the said principal sum shall become due at the option of the said mortgagee or obligee after default in the payment of any instalment of principal, or after default in the payment of interest for ..... days, or after default in the payment of any rent or other charge made payable by said indenture of lease for..... days, or after default in the payment of any tax or assessment for ..... days after notice and demand.

In witness whereof, the said part.... of the first part to these presents ha... hereunto set ..... hand.. and seal.. the day and year first above written.

Sealed and delivered
in the presence of

Derivation: Real Property Law, § 237, added by L. 1898, ch. 338.

§ 274. Transfers and mortgages of interest in decedents' estates. Every conveyance, assignment, or other transfer of, and every mortgage or other charge upon the interest, or any part thereof, of any person in the estate of a decedent which is situated within this state, shall be in writing, and shall be acknowledged or proved in the manner required to entitle conveyances of real property to be recorded. Any such instrument may also be recorded as hereinafter provided; and if not so recorded, it is void against any subsequent purchaser or mortgagee of the same interest or any part thereof, in good faith and for a valuable consideration, whose con-

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veyance or mortgage is first duly recorded. If such interest is entirely in the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the clerk of the county where such real property is situated. If such interest is in both the personal and the real property of a decedent, the conveyance or mortgage shall be recorded in the office of the surrogate issuing letters testamentary or letters of administration upon the said decedent's estate, or if no such letters have been issued, then in the office of the surrogate having jurisdiction to issue the same, and also in the office of the said county clerk. Such a conveyance or mortgage when so recorded, shall be indexed under the name of the decedent, in a book to be kept for that purpose by each recording officer. The person presenting any such instrument for record shall pay to the clerk of the surrogate's court a fee of ten cents for each folio.

Derivation: L. 1904, ch. 692, § 1, as amended by L. 1908, ch. 173, § 1.

§ 275. Assignment of mortgage required in lieu of certificate of discharge.

Whenever a mortgage upon real property shall be due and payable the mortgagee or the owner and holder of the mortgage shall execute and deliver to any person or persons, or corporation, named by the owner of the land upon which the same is a lien, an assignment of the mortgage duly executed which may by its terms be without recourse to the assignor in any event and discharge such assignor from any liability thereunder to the assignee; provided a demand has been made of the holder of the mortgage by the owner of the land upon which the same is a lien for such assignment in lieu of a certificate of discharge of the same, and the full amount of principal and interest due on the mortgage and the usual fee for drawing the assignment is tendered or paid. But nothing in this section contained shall require such execution and delivery of an assignment of the mortgage in lieu of a certificate of discharge where the owner and holder of the mortgage so due and payable also holds or has a junior or subsequent mortgage or other lien on the same property. (Added by L. 1915, ch. 493, in effect May 3, 1915.)

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§ 275. Apportionment of rents, annuities, dividends and other payments.

All rents reserved on any lease and all annuities, dividends and other payments of every description made payable or becoming due at fixed periods under any instrument shall be apportioned so that on the death of any person interested in such rents, annuities, dividends or other such payments, or in the estate or fund from or in respect to which the same issues or is derived, or on the determination or transfer by any other means of the interest of any such person, he, or his executors, administrators or assigns, and the person who thereupon becomes entitled to such rents, annuities, dividends or other payments or the estate or fund from or in respect of which the same issues or is derived, shall each be entitled to a proportion of such rents, annuities, dividends and other payments, according to the time which shall have elapsed from the commencement or last period of payment thereof to the time of such determination or transfer as the case may be, including the day of such death or of such determination or transfer, after making allowance and deductions on account of charges on such rents, annuities, dividends and other payments. If any such payment become due or be collected after such determination or transfer every such person or his executors, administrators or assigns shall have the same remedies at law and in equity for recovering such apportioned parts of such rents, annuities, dividends and other payments, when the entire amount of which such apportioned parts form part, becomes due and payable and not before, as he or they would have had for recovering and obtaining such entire rents, annuities, dividends and other payments, if entitled thereto; but the persons liable to pay rents reserved by any lease or demise, or the real property comprised therein shall not be resorted to for such apportioned parts, but the entire rents of which such apportioned parts form part, must be collected and recovered by the person or persons who, but for this section, would have been entitled to the entire rents; and such portions shall be recoverable from such person or persons by the parties entitled to the same under this section. If any such payment shall have been collected before such determination or trans-

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fer, then the amount apportionable as herein provided shall be paid or allowed immediately, to the person entitled thereto, and may be recovered from the person who shall have collected the same. This section shall not apply to any case in which it shall be expressly stipulated that no apportionment be made, or to any sums made payable in policies of insurance of any description or under annuity contracts issued by life insurance companies. (Added by L. 1916, ch. 313, in effect April 25, 1916.)

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ARTICLE 9.

RECORDING INSTRUMENTS AFFECTING REAL PROPERTY.

SECTION 290. Definitions; effect of article.
291. Recording of conveyance.
292. By whom conveyances must be acknowledged or proved.
293. Recording of conveyances heretofore acknowledged or proved.
294. Recording executory contracts and powers of attorney.
295. Recording of letters patent.
296. Recording copies of instruments which are in secretary of state's office.
297. Certified copies may be recorded.
298. Acknowledgments and proofs within the state.
299. Acknowledgments and proofs in other states.
300. Acknowledgments and proofs elsewhere.
301. Acknowledgments and proofs in foreign countries
302. Acknowledgments and proofs by married women.
303. Requisites of acknowledgments.
304. Proof by subscribing witness.
305. Compelling witnesses to testify.
306. Certificate of acknowledgment or proof.
307. When certificate to state time and place.
308. When certificate must be under seal.
309. Acknowledgment by corporation and form of certificate.
310. When county clerk's authentication necessary.
311. When other authentication necessary.
312. Contents of certificate of authentication.
313. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.
314. Proof when witnesses are dead.
315. Recording books.
316. Indexes.
317. Order of recording.
318. Certificate to be recorded.
319. Time of recording.
320. Certain deeds deemed mortgages.
321. Recording discharge of mortgage.
322. Recording discharge of mortgage in counties embraced in cities of the first class.
323. Recording discharge of mortgage in counties embraced in cities of first class where property lies in more than one of such counties.

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SECTION 324. Effect of recording assignment of mortgage.
325. Recording of conveyances made by treasurer of Connecticut.
326. Revocation to be recorded.
327. Penalty for using long forms of covenants.
328. Certain acts not affected.
329. Actions to have certain instruments canceled of record.
330. Officers guilty of malfeasance liable for damages.
331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.
332. The record of certain conveyances validated.
333. Execution of certificates of payment and discharge of mortgages.
333. When conveyances of real property not to be recorded.
334. Maps to be filed; penalty for nonfiling.
335. Filing of maps in Suffolk county; penalty for nonfiling.

§ 290. Definitions; effect of article.

1. The term "real property," as used in this article, includes lands, tenements and hereditaments and chattels real, except a lease for a term not exceeding three years.

2. The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration, and every assignee of a mortgage, lease or other conditional estate.

3. The term "conveyance" includes every written instrument, by which any estate or interest in real property is created, transferred, mortgaged or assigned, or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument postponing or subordinating a mortgage lien; except a will, a lease for a term not exceeding three years, an executory contract for the sale or purchase of lands, and an instrument containing a power to convey real property as the agent or attorney for the owner of such property.

4. The term "recording officer" means the county clerk of the county, except in the counties of New York, Kings or Westchester, where it means the register of the county.

5. This article does not apply to leases for life or lives, or for years, heretofore made, of lands in either of the counties of Albany, Ulster, Sullivan, Herkimer, Dutchess, Columbia, Delaware or Schenectady.

Derivation: Real Property Law, § 240, as amended by L. 1905, ch. 449, § 1.

§ 291. Recording of conveyances.

A conveyance of real property, within the state, on being duly acknowledged by the person executing the same, or proved as required by this chapter, and such acknowledgment or proof duly certified when required by this chapter, may be recorded in the

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office of the clerk of the county where such real property is situated, and such county clerk shall, upon the request of any party, on tender of the lawful fees therefor, record the same in his said office. Every such conveyance not so recorded is void as against any subsequent purchaser in good faith and for a valuable consideration, from the same vendor, his heirs or devisees, of the same real property or any portion thereof, whose conveyance is first duly recorded.

Derivation: Real Property Law, § 241; L. 1896, ch. 572, § 2, pt. incorporated.

§ 292. By whom conveyance must be acknowledged or proved.

Except as otherwise provided by this article, such acknowledgment can be made only by the person who executed the conveyance, and such proof can be made only by some other person, who was a witness of its execution, and at the same time subscribed his name to the conveyance as a witness.

Derivation: Real Property Law, § 242.

§ 293. Recording of conveyances heretofore acknowledged or proved.

A conveyance of real property, within the state, heretofore executed, and heretofore acknowledged or proved, and certified, so as to be entitled to be read in evidence, or recorded, under the laws in force at the time when so acknowledged or proved, but which has not been recorded is entitled to be read in evidence, and recorded in the same manner, and with the like effect, as if this chapter had not been passed. If heretofore executed, but not proved or acknowledged, it may be proved or acknowledged in the same manner as conveyances hereafter executed and with like effect.

Derivation: Real Property Law, § 243.

§ 294. Recording executory contracts and powers of attorney.

An executory contract for the sale or purchase of real property, or an instrument containing a power to convey real property, as the agent or attorney for the owner of the property, acknowledged or proved, and certified, in the manner to entitle a conveyance to be recorded, may be recorded by the recording officer of any county in which any of the real property to which it relates is situated.

Derivation: Real Property Law, § 244.

§ 295. Recording of letters patent.

Letters patent, issued under the great seal of the state, granting real property, may be recorded in the county where such property

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is situated, in the same manner and with like effect, as a conveyance duly acknowledged or proved and certified so as to entitle it to be recorded.

Derivation: Real Property Law, § 245.

§ 296. Recording copies of instruments which are in secretary of state's office.

A copy of an instrument affecting real property, within the state, recorded or filed in the office of the secretary of state, certified in the manner required to entitle the same to be read in evidence, may be recorded with such certificate in the office of any recording officer of the state.

Derivation: Real Property Law, § 246.

§ 297. Certified copies may be recorded.

A copy of a record, or of any recorded instrument, certified or authenticated so as to be entitled to be read in evidence, may be again recorded in any office where the original would be entitled to be recorded. Such record has the same effect as if the original were recorded. A copy of a conveyance or mortgage affecting separate parcels of real property situated in different counties, or of the record of such conveyance or mortgage in one of such counties, certified or authenticated so as to be entitled to be read in evidence, may be recorded in any county in which any such parcel is situated, with the same effect as if the original instrument authenticated as required by section three hundred and ten of this chapter were so recorded.

Derivation: Real Property Law, § 247.

§ 298. Acknowledgments and proofs within the state.

The acknowledgment or proof of a conveyance of real property within the state may be made at any place within the state, before a justice of the supreme court; or within the district wherein such officer is authorized to perform official duties, before a judge, clerk, deputy clerk, or special deputy clerk of a court, a notary public, an official examiner of title, or the mayor or recorder of a city, a justice of the peace, surrogate, special surrogate, special county judge, or commissioner of deeds, except that such an acknowledgment or proof of a conveyance may be taken by a justice of the peace anywhere within the county containing the town or city in which he is authorized to perform official duties. (Amended by L. 1915, ch. 190; L. 1920, ch. 385, in effect April 28, 1920.)

Derivation: Real Property Law, § 248.

§ 299. Acknowledgments and proofs in other states.

The acknowledgment or proof of a conveyance of real property, within the state, may be made without the state, but within the United States, before any of the following officers acting within his jurisdiction, or of the court to which he belongs:

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1. A judge of the supreme court, of the circuit court of appeals, of the circuit court, or of the district court of the United States.

2. A judge of the supreme, superior, or circuit court of a state.

3. A mayor of a city.

4. A commissioner appointed for the purpose by the governor of the state.

5. Any officer of the state or territory in which the acknowledgment is taken authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein.

6. Any officer of the District of Columbia authorized by the laws of the United States to take the acknowledgment or proof of deeds to be recorded in said district.

Derivation: Real Property Law, § 249, as amended by L. 1903, ch. 419, § 1, and L. 1908, ch. 61, §§ 1, 2.

§ 300. Acknowledgments and proofs elsewhere.

If the party or parties executing such conveyance shall be or reside in any place over which the United States of America at the time has or exercises sovereignty, control, or a protectorate, or in case the party or parties executing such conveyance shall be certified by the officer taking the acknowledgment or proof to be enlisted or commissioned in the military or naval forces of the United States of America, either within or without the United States, the same may be acknowledged or proved before:

1. A judge or clerk of a court of record thereof, acting within his jurisdiction;

2. A mayor or other chief officer of a city, acting in such city;

3. A commissioner appointed for the purpose by the governor of this state and acting within his jurisdiction;

4. An officer of the United States regular army or volunteer service or national army, or United States national guard or United States marine corps, of the rank of captain or higher, or an officer of the United States navy or United States naval aviation corps, of the rank of lieutenant or higher.

The certificate of an acknowledgment taken before any of the officers mentioned in subdivision one, two or three of this section, shall have attached thereto the seal of the court or officer if he have a seal, and if such officer have no seal, then a statement to that effect. The certificate of an acknowledgment taken before an officer mentioned in subdivision four of this section, shall state his rank, the name of the city, or other political division, or country or place where taken, and that the party or parties executing such conveyance are enlisted or commissioned and engaged in military or naval duties. The fact that the officer before whom such acknowledgment was taken, was duly commissioned and acting as such at the time when such acknowledgment was taken shall be certified by the secretary of war or the secretary of the navy, as the case may be, of the United States, or by the officer in the war department or the navy department having

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charge of the record of commissions of officers in such respective departments. (Amended by L. 1918, ch. 116, in effect April 3, 1918.)

Derivation: Real Property Law, § 249a, added by L. 1901, ch. 84, § 1, and amended by L. 1906, ch. 398, § 1.

§ 301. Acknowledgments and proofs in foreign countries.

The acknowledgment, or proof, of a conveyance of real property situated within this state, may be made without the United States before any of the following officers:

1. An ambassador, a minister plenipotentiary, a minister extraordinary, a minister resident, or a chargé d'affaires of the United States, accredited to the country, in which the acknowledgment or proof is taken, and residing therein.

2. A consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent, or a vice-commercial agent of the United States, if residing within the country to which he is appointed, or a secretary of legation at the post, port, place or within the limits of his legation.

3. A commissioner appointed for the purpose by the governor, and acting within his own jurisdiction.

4. A person specially authorized for that purpose by a commission, under the seal of the supreme court of this state, issued to a reputable person residing in, or going to, the country where the acknowledgment or proof is to be taken.

5. If within the Dominion of Canada, it may also be made before any judge of a court of record; or before any officer of a province or territory of such Dominion authorized by the laws of such province or Dominion to take the acknowledgment or proof of deeds to be recorded therein.

6. If within the United Kingdom of Great Britain and Ireland, or the dominions thereunto belonging, it may also be made before the mayor, the provost or other chief magistrate of a city or town therein, under his hand and the seal of such city or town.

7. All acts of ambassadors, ministers plenipotentiary, ministers extraordinary, ministers resident, chargés d'affaires and secretaries of legation, in taking the acknowledgment of proof of a conveyance of real property situated within this state, performed before April twenty-ninth, nineteen hundred and four, are hereby confirmed, provided that the certificate of acknowledgment or proof is in the form required by the laws of this state.

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8. If within the states comprising the empire of Germany or within the kingdom of Italy, it may also be made before a judge of a court of record under the seal of such court, or before a notary public under the seal of his office and the seal of the city or town in which the notary resides.

9. If within the empire of Austria, kingdom of Hungary and kingdoms, states, territories and provinces comprising the monarchy of Austria-Hungary, it may also be made before a judge or clerk of a court of record under the seal of such court or before an imperial royal notary or royal notary under the seal of his offices and the seal of the city or town in which such notary resides.

10. If within the kingdom of Norway, Sweden or Denmark or if within any of their kingdoms, states, colonies, dependencies, territories, provinces, political subdivisions or dominions thereunto belonging, including Greenland and Iceland, it may be made before a judge or a clerk of a court of record therein under his hand and the seal of such court, or before the mayor or other chief magistrate of a city or town therein under his hand and the seal of such city or town, or before a notary public therein under his hand and the seal of his office and the seal of the city or town in which the notary resides, or before a sheriff therein, under his hand and the seal of the city or town in which the sheriff resides, or before a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent or a vice-commercial agent, of either Norway, Sweden or Denmark accredited to the place in which the acknowledgment or proof is taken, and residing therein if under the hand and seal of his office or the seal of the consulate or legation to which he is attached. (Amended by L. 1912, ch. 70; L. 1915, ch. 28; L. 1916, ch. 395, in effect May 2, 1916.)

Derivation: Real Property Law, § 250, as amended by L. 1901, ch. 611, § 1; subds. 2 and 7 as amended by L. 1904, ch. 528, §§ 1, 2; subd. 5 as amended by L. 1908, ch. 61, § 3; subd. 6, as amended by L. 1903, ch. 98, § 1; subd. 8, as added by L. 1904, ch. 690, § 1.

§ 302. Acknowledgments and proofs by married women.

The acknowledgment or proof of a conveyance of real property, within the state, or of any other written instrument, may be made by a married woman the same as if unmarried.

Derivation: Real Property Law, § 251.

§ 303. Requisites of acknowledgments.

An acknowledgment must not be taken by any officer unless he knows or has satisfactory evidence, that the person making it is the person described in and who executed such instrument.

Derivation: Real Property Law, § 252.

§ 304. Proof by subscribing witness.

When the execution of a conveyance is proved by a subscribing witness, such witness must state his own place of residence, and that he knew the person described in and who executed the conveyance. The proof must not be taken unless the officer is personally acquainted with such witness, or has satisfactory evidence that he is the same person, who was a subscribing witness to the conveyance.

Derivation: Real Property Law, § 253.

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§ 305. Compelling witnesses to testify.

On the application of a grantee in a conveyance, his heir or personal representative, or a person claiming under either of them, verified by the oath of the applicant, stating that a witness to the conveyance, residing in the county where the application is made, refuses to appear and testify concerning its execution, and that such conveyance can not be proved without his testimony, any officer authorized to take, within the state, acknowledgment or proof of conveyance of real property may issue a subpœna, requiring such witness to attend and testify before him concerning the execution of the conveyance. A person who, on being duly served with such a subpœna, without reasonable cause refuses or neglects to attend or refuses to answer under oath concerning the execution of such conveyance, forfeits to the person injured one hundred dollars; and may also be committed to prison by the officer who issued the subpœna, there to remain without bail and without the liberties of the jail, until he answers under oath as required by this section.

Derivation: Real Property Law, § 254.

§ 306. Certificate of acknowledgment or proof.

An officer taking the acknowledgment or proof of a conveyance must indorse thereupon or attach thereto, a certificate, signed by himself, stating all the matters required to be done, known, or proved on the taking of such acknowledgment or proof; together with the name and substance of the testimony of each witness examined before him, and if a subscribing witness, his place of residence.

Any conveyance which has heretofore been recorded, or which may hereafter be recorded, shall be deemed to have been duly acknowledged or proved and properly authenticated, when thirty years have elapsed since such recording; saving, however, the rights of every purchaser in good faith and for a valuable consideration deriving title from the same vendor or grantor, his heirs or devisees, to the same property or any portion thereof, whose conveyance shall have been duly recorded before the said period of thirty years shall have elapsed, or before September first, nineteen hundred and five.

Derivation: Real Property Law, § 255, as amended by L. 1905, ch. 450, § 1.

§ 307. When certificate to state time and place.

When the acknowledgment or proof is taken by a commissioner appointed by the governor, for a city or county within the United States, and without the state, the certificate must also state the day on which, and the town and county or the city in which the same was taken.

Derivation: Real Property Law, § 256.

§ 308. When certificate must be under seal.

When a certificate of acknowledgment or proof is made by a commissioner appointed by the governor, or by the mayor or other chief magistrate of a city or town without the United States, or by an ambassador, a minister, a chargé d'affaires, a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul or a deputy-consul, a consular or a vice-consular agent, a commercial or a vice-commercial agent, or a

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secretary of legation, of the United States, it must be under his seal of office, or the seal of the consulate or legation to which he is attached.

All acknowledgments or proofs of deeds, mortgages or other instruments relating to real property, the certificate of which were made in the form required by the laws of this state, by a consul-general, a vice-consul-general, a deputy-consul-general, a consul, a vice-consul, a deputy-consul, a consular agent, a vice-consular agent, a commercial agent, a vice-commercial agent, or a secretary of legation of the United States prior to April twenty-ninth, nineteen hundred and four, are confirmed, but nothing herein contained shall affect any action or proceeding now pending in any court.

Derivation: Real Property Law, § 257, as amended by L. 1904, ch. 528, § 3.

§ 309. Acknowledgment by corporation and form of certificate.

The acknowledgment of a conveyance or other instrument by a corporation, must be made by some officer thereof authorized to execute the same by the board of directors of said corporation. The certificate of acknowledgment must be in substantially the following form, the blanks being properly filled.

State of New York, }
County of ..... } ss.:

On the ..... day of ..... in the year ....., before me personally came ..... to me known, who, being by me duly sworn, did depose and say that he resides in.....; that he is the (president or other officer) of the (name of corporation), the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

(Signature and office of officer taking acknowledgment.)

If such corporation have no seal, that fact must be stated in place of the statements required respecting the seal.

Derivation: Real Property Law, § 258.

§ 310. When county clerk's authentication necessary.

A certificate of acknowledgment or proof, made within the state, by a commissioner of deeds, justice of the peace, or, except as otherwise provided by law, by a notary public, does not entitle the conveyance to be read in evidence or recorded, except

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within the county in which the officer making the same is authorized to act at the time of making such certificate, unless authenticated by a certificate of the clerk of the same county; provided, however, that all certificates of acknowledgments or proof, made by or before a commissioner of deeds of the city of New York residing in any part therein, shall be authenticated by the clerk of any county within said city, in whose office such commissioner of deeds shall have filed a certificate under the hand and seal of the city clerk of said city, showing the appointment and term of office of such commissioner, and no other certificate shall be required, from any other officer to entitle said conveyance to be read in evidence or recorded in any county of the state of New York. But this section does not apply to a conveyance executed by an agent for the Holland Land Company or of the Pulteney estate, lawfully authorized to convey real property. (Amended by L. 1911, ch. 196, in effect May 29, 1911.)

Derivation: Real Property Law, § 259, as amended by L. 1899, ch. 147, § 1.

§ 311. When other authentication necessary.

In the following cases a certificate of acknowledgment or proof is not entitled to be read in evidence or recorded unless authenticated by certificates by the following officers, respectively:

1. Where the original certificate of acknowledgment or proof is made by a commissioner appointed by the governor, by the secretary of state.

2. Where made by a judge of a court of record in Canada, by the clerk of the court.

3. Where made by the officer of a state of the United States, or of any province or territory of the Dominion of Canada, authorized by the laws thereof to take the acknowledgment or proof of deeds to be recorded therein, by the secretary of state of the state, the provincial secretary, deputy provincial secretary or assistant provincial secretary of the province, or commissioner of the territory of the Dominion of Canada, or by the clerk, register, recorder or prothonotary of a county, city or parish in which the certificate purports to be made, or by the clerk of any court in or of such state or dominion, county, city or parish having by law a seal. The word county shall be deemed to apply to and include the District of Columbia for the purpose of this section. All certificates authenticating such acknowledgments or proofs of deeds, mortgages or other instruments relating to real property heretofore made by any of the officers above referred to are confirmed, saving, however, the rights of purchasers in good faith and

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for a valuable consideration whose conveyance shall have been duly recorded before this act shall take effect; this act shall not affect any action or legal proceeding now pending.

4. All acts of the secretary of state of any state or territory of the United States in authenticating a certificate of acknowledgment or proof of a conveyance of real property within the state, performed before October first, eighteen hundred and ninety-six, are hereby confirmed, provided that the said certificate of authentication is in the form required by the laws of this state. (Amended by L. 1913, ch. 209, in effect Apr. 4, 1913.)

Derivation: Real Property Law, § 260; subd. 3, as amended by L. 1907, ch. 633, § 1, and L. 1908, ch. 136, § 1; subd. 4, as added by L. 1905, ch. 329, § 1.

§ 312. Contents of certificate of authentication.

An officer authenticating a certificate of acknowledgment or proof must subjoin or attach to the original certificate a certificate under his hand, and if he has, pursuant to law, an official seal, under such seal. Except when the original certificate is made by a judge of a court of record in Canada, such certificate of authentication must specify that, at the time of taking the acknowledgment or proof, the officer taking it was duly anthorized to take the same; that the authenticating officer is acquainted with the former's handwriting, or has compared the signature to the original certificate with that deposited in his office by such officer; and that he verily believes the signature to the original certificate is genuine; and if the original certificate is required to be under seal, he must also certify that he has compared the impression of the seal affixed thereto with the impression of the seal of the officer who took the acknowledgment or proof deposited in his office, and that he verily believes the impression of the seal upon the original certificate is genuine. A clerk's certificate authenticating a certificate of acknowledgment or proof, taken before a judge of a court of record in Canada, must specify that there is such a court; that the judge before whom the acknowledgment of proof was taken, was, when it was taken, a judge thereof; that such court has a seal; that the officer authenticating is clerk thereof; that he is well acquainted with the handwriting of such judge, and verily believes his signature is genuine.

Derivation: Real Property Law, § 261.

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§ 313. Recording of conveyances acknowledged or proved without the state, when parties and certifying officer are dead.

When the execution of a conveyance of real property within this state is acknowledged or proved according to the laws of any other state of the United States, and a certificate of the acknowledgment or proof signed by the officer taking it is annexed to or endorsed upon the instrument, if such officer and the grantor or mortgagor be dead and the death of all of them be proved by affidavit, sworn to in such state before an officer authorized by its laws to administer an oath therein, the conveyance, with the affidavit or affidavits annexed thereto, on being authenticated as required by this section, may be read in evidence and recorded in the same manner, and with like effect, as if the conveyance was acknowledged or proved and certified as required by the laws of this state. To entitle such conveyance and affidavits to be read in evidence, or recorded, a certificate of the clerk, recorder, register or prothonotary of the county in which the deceased officer resided, authenticating his signature, and also certifying that the conveyance is acknowledged or proved in all respects, as required by the laws of such state, must be annexed to the original certificate; and a like certificate of such clerk, recorder, register or prothonotary, authenticating the signature of the officer, before whom the affidavits proving the deaths were taken, must be annexed to such affidavits. The affidavits on being recorded, are presumptive evidence of the matters of fact, required to be stated therein.

Derivation: Real Property Law, § 262.

§ 314. Proof when witnesses are dead.

When the witnesses to a conveyance, authorized to be recorded, are dead, its execution may be proved before any officer authorized to take within the state the acknowledgment and proof of conveyances, other than a commissioner of deeds, a notary public, or a justice of the peace. The proof of the execution must be made by satisfactory evidence of the death of all the witnesses thereto, and of the handwriting of such witnesses, or any one of them, and of the grantor, which evidence, with the name and residence of each witness examined, must be set forth by the officer taking the same, in his certificate of proof. A conveyance so proved, and certified, may be recorded in the proper office, if the original conveyance be at the same time deposited in the same office, there to remain for the inspection of all persons desiring to examine

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the same. If the conveyance affects real property in two or more counties, a certified copy of the conveyance, with the proof and certificates, may be recorded in each of such counties. Such recording and deposit are constructive notice of the execution of such conveyance to all purchasers of the same real property, or any part thereof, from the same vendor, his heirs or assigns, subsequent to such recording, but do not entitle the conveyance or the record thereof, or a transcript of the record, to be read in evidence.

Derivation: Real Property Law, § 263.

§ 315. Recording books.

Different sets of books must be provided by the recording officer of each county, for the recording of deeds and mortgages; in one of which sets he must record all conveyances and other instruments absolute in their terms delivered to him, pursuant to law, to be so recorded, which are not intended as mortgages, or securities in the nature of mortgages, and in the other set, such mortgages and securities delivered to him.

Derivation: Real Property Law, § 264.

§ 316. Indexes.

Each recording officer must provide, at the expense of his county, proper books for making general indexes of instruments recorded in his office, and must form indexes therein, so as to afford correct and easy reference to the books of record in his office. There must be one set of indexes for mortgages or securities in the nature of mortgages, and another set for conveyances and other instruments not intended as such mortgages or securities. Each set must contain two lists in alphabetical order, one consisting of the names of the grantors or mortgagors, followed by the names of their grantors, or mortgagors, with proper blanks in each class of names, of the grantees or mortgagees, followed by the names of their grantors or mortgagors, with proper blanks in each class of names, for subsequent entries, which entries must be made as instruments are delivered for record. This section, so far as relates to the preparation of new indexes, shall not apply to a county where the recording officer now has general numerical indexes. A recording officer who records a conveyance of real property, sold by virtue of an execution, or by a sheriff, referee or other person, pursuant to a judgment, the granting clause whereof states whose right, title or interest was sold, must insert in the proper index, under the

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head "grantors," the name of the officer executing the conveyance, and of each person whose right, title or interest is so stated to have been sold.

Derivation: Real Property Law, § 265.

§ 317. Order of recording.

Every instrument, entitled to be recorded, must be recorded by the recording officer in the order and as of the time of its delivery to him therefor, and is considered recorded from the time of such delivery.

Derivation: Real Property Law, § 266.

§ 318. Certificate to be recorded.

The certificate of the acknowledgment or proof of the execution of an instrument, and the certificate authenticating the signature or seal of the officer so certifying, or both, if required, must be recorded together with the instrument so acknowledged or proved; otherwise neither the record of the instrument nor a transcript thereof can be read in evidence.

Derivation: Real Property Law, § 267.

§ 319. Time of recording.

The recording officer must make an entry in the record, immediately after the copy of every instrument recorded by him, stating the hour, day, month and year, when it was recorded, and must indorse upon every such instrument a certificate, stating the time as aforesaid, when, and the book and page where, the same was recorded.

Derivation: Real Property Law, § 268.

§ 320. Certain deeds deemed mortgages.

A deed conveying real property, which, by any other written instrument, appears to be intended only as a security in the nature of a mortgage, although an absolute conveyance in terms, must be considered a mortgage; and the person for whose benefit such deed is made, derives no advantage from the recording thereof, unless every writing, operating as a defeasance of the same, or explanatory of its being desired to have the effect only of a mortgage, or conditional deed, is also recorded therewith, and at the same time.

Derivation: Real Property Law, § 269.

§ 321. Recording discharge of mortgage.

A mortgage registered or recorded must be discharged upon the

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record thereof, by the recording officer, when there is presented to him the certificate signed by the mortgagee, his personal representative or assignee, and acknowledged or proved and certified in like manner as to entitle a conveyance to be recorded, specifying that the mortgage has been paid, or otherwise satisfied and discharged. If any mortgage, registered or recorded, is stated in the certificate to have been taken by the alien property custodian under and pursuant to the trading with the enemy act adopted by the United States congress, and approved October sixth, nineteen hundred and seventeen, or any act amendatory thereof or supplemental thereto, such certificate may be executed by such alien property custodian or such person as the president may appoint to give full acquittance and discharge for money or property belonging to an enemy or ally of an enemy which may be conveyed, assigned, delivered or transferred to said alien property custodian, with like effect as if the same had been executed by the mortgagee, his personal representative or assignee. When so signed and acknowledged or proved and certified in like manner as to entitle a conveyance to be recorded such certificate may be recorded, and such certificate, the record thereof and a certified copy of such record may be introduced in evidence in all courts of this state. The certificate of discharge, and the certificates of its acknowledgment or proof, must be recorded and filed; and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof. After such discharge has been recorded the recording officer shall make and deliver to the person in whose interest such discharge of mortgage is executed and recorded, his certificate setting forth the names of the mortgagor and mortgagee, the liber and page at which, the time when, such mortgage was recorded, and the date on which said mortgage was satisfied and discharged. (Amended by L. 1918, ch. 58, in effect March 19, 1918.)

Derivation: Real Property Law, § 217, as amended by L. 1903, ch. 490, § 1, and L. 1907, ch. 347, § 1.

§ 322. Recording discharge of mortgage in counties embraced in cities of the first class.

In counties wholly embraced in a city of the first class, no mortgage shall be discharged of record, unless in addition to the certificate provided and required by the preceding section, there shall be presented to the recording officer for cancellation the original mortgage, or a certified copy of an order made and entered as hereinafter provided. The said officer shall, at the time of the discharge of said mortgage, cancel said original mortgage by effacing the signatures thereto, without obliterating the same, and shall file the same in his office and keep the same so filed for the term of ten years. If for any reason said

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mortgagee, his personal representative or assign cannot produce said original mortgage, the said officer shall not discharge said mortgage until there shall be delivered to him a certified copy of an order made and entered as hereinafter provided, which order shall be recorded and filed with the certificate of discharge, or the substitute for said certificate of discharge hereinafter referred to, and a reference must be made to the book and page containing such record in the minute of the discharge of such mortgage, made by the officer upon the record thereof. Where the mortgage shall have been lost, mutilated or destroyed, or upon which the signature or signatures are wholly obliterated or removed, or where for any reason production of said mortgage is rendered impossible or is refused by the person having the same in his possession, any person having any interest in securing the discharge of the same may apply to the supreme court or the county court in or of the county in which property affected by the mortgage, or any part thereof, is situated, upon a petition duly verified, containing the name and address of the owner of the property covered by the mortgage, the name and address of the owner of the bond and mortgage, to the best of the petitioner's knowledge and belief, and the owner thereof as appears of record, a full description of the mortgage and of any assignments thereof, that may appear upon the record, including the names of the mortgagee, assignee, date, amount, and the place, book, page and time of record of said mortgage and any assignments thereof, and a description of the property affected thereby, and showing the loss, mutilation or destruction of the mortgage, or obliteration or removal of the signature or signatures thereon or therefrom, or the impossibility of producing said mortgage, or the refusal to produce the said mortgage by the person having the same in his possession, and the interest of the petitioner in the property or the mortgage, for an order dispensing with the production of the said mortgage and directing the discharge thereof. Eight days' personal notice of the application for such order shall be given to the then present owner of the real estate, the mortgagee, or his or their personal representatives, heirs, successors or assigns as the case may require, except that where any of the parties upon whom service is herein required to be made cannot with due diligence be personally served, the court to which the petition is presented may direct such mode of service as may appear proper. If sufficient cause be shown, the court may issue an order to show cause upon the petition returnable in less than eight days. Upon the return day of such notice or order to show cause, the court, upon due proof of service of the notice, or order to show cause, upon the parties above specified, and on further proof of the identity of the person presenting the petition, shall inquire, in such

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manner as it may deem advisable, into the truth of the facts set out in the petition, and upon proof satisfactory to the court that said mortgage has been lost, mutilated or destroyed, or that the signature or signatures have been obliterated or removed thereon, or therefrom, or that the production of said mortgage is impossible, or that its production is refused by the person having the same in his possession, and as to identity of the mortgagee, his personal representatives or assigns, and such proof in relation thereto as to the court may seem desirable, the court shall make an order dispensing with the production of the mortgage and directing its cancellation of record, as hereinabove provided. In case the mortgagee, his personal representatives or assigns, shall not appear in court upon the return day of said notice or order to show cause, or shall refuse or neglect, if present, to give the certificate for discharge above specified, the court may direct the amount due upon said bond and mortgage to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part, and the mortgage to be cancelled of record in all counties where any of the lands affected by said mortgage are situated upon the production of a certified copy of the order and the receipt of such officer showing that the amount of said mortgage has been deposited with him, which receipt shall be a substitute for the certificate of discharge above specified. If in the proceedings had under and in pursuance of this section it shall appear to the satisfaction of the court that the principal sum and interest due upon said mortgage, or the bond accompanying the same has been fully paid, then the said deposit of money hereinabove provided for shall be dispensed with. The money deposited shall be payable to the mortgagee, his personal representatives or assigns, upon an order of the supreme or county court directing the payment thereof to him, made upon such evidence as to his right to receive the same as shall be satisfactory to the court. (Amended by L. 1912, ch. 254; L. 1918, ch. 395, in effect April 30, 1918.)

Derivation: Real Property Law, § 270a, as added by L. 1903, ch. 490, § 2, and amended by L. 1907, ch. 289, § 1.

§ 323. Recording discharge of mortgage in counties embraced in cities of first class where property lies in more than one of such counties.

In any case, however, in which the land affected by a mortgage which is to be discharged lies in more than one such county, and in which the mortgage has been recorded in more than one such county, the original mortgage need be filed in one of said counties only. For the discharge of such mortgage in the other county or counties where the land is located there shall be required to be filed, together with a properly executed satisfaction piece, a copy of the mortgage certified to by the recording officer of the county in which the original mortgage shall have been filed, together with a

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certificate of said recording officer, stating that the said mortgage has been discharged in his county by the filing of the original mortgage, and stating the time when the mortgage was so discharged. The said certificate shall be recorded and filed with the satisfaction piece in the other county, and a reference shall be made to the book and page, containing such record, in the minute of the discharge of such mortgage, made by the officer upon the record thereof. The recording officer, however, shall not discharge the said mortgage without first having compared his record of it with the certified copy of the recording officer of the other county, so as to satisfy himself of the identity of the records in the two counties, and he shall keep the said certified copy on file for ten years the same as though it were the original mortgage.

Derivation: Real Property Law, § 270-b, as added by L. 1907, ch. 621, § 1.

§ 324. Effect of recording assignment of mortgage.

The recording of an assignment of a mortgage is not in itself a notice of such assignment to a mortgagor, his heirs or personal representatives, so as to invalidate a payment made by either of them to the mortgagee.

Derivation: Real Property Law, § 271.

§ 325. Recording of conveyances made by treasurer of Connecticut.

A conveyance of real property, executed at any time since the tenth day of March, eighteen hundred and twenty-five, by the treasurer of the State of Connecticut, acknowledged by him before the secretary of state of such state, and the acknowledgment of which is certified by such secretary of state under the seal of such state, in the manner required for the acknowledgment and certification of a conveyance within this state, may be recorded in the proper office within this state, without further proof thereof.

Derivation: Real Property Law, § 272.

§ 326. Revocation to be recorded.

A power of attorney or other instrument, recorded pursuant to this article, is not deemed revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also recorded in the same office in which the instrument containing the power was recorded.

Derivation: Real Property Law, § 273.

§ 327. Penalty for using long form of covenants.

The recording officer of any county may charge for the recording of an instrument containing any of the covenants mentioned in section two hundred and fifty-three and two hundred and fifty-four of this chapter, at large, instead of the short forms thereof, in said sections contained, the sum of five dollars in addition to the fees chargeable by law for such recording.

Derivation: Real Property Law, § 274.

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§ 328. Certain acts not affected.

Nothing contained in this article repeals or affects any act providing for recording and indexing instruments affecting real property in the city of New York, according to city blocks or other limited areas.

Derivation: Real Property Law, § 275.

§ 329. Actions to have certain instruments canceled of record.

An owner of real property or of any undivided part thereof or interest therein, may maintain an action to have any recorded instrument in writing relating to the same, other than those required by law to be recorded, declared void or invalid, or to have the same canceled of record as to said real property, or his undivided part thereof or interest therein.

Derivation: Real Property Law, § 276.

§ 330. Officers guilty of malfeasance liable for damages.

An officer authorized to take the acknowledgment or proof of a conveyance or other instrument, or to certify such proof or acknowledgment, or to record the same, who is guilty of malfeasance or fraudulent practice in the execution of any duty prescribed by law in relation thereto, is liable in damages to the person injured.

Derivation: Real Property Law, § 277.

§ 331. Laws and decrees of foreign countries appointing agents and attorneys and recording of the same.

A copy of a law of a foreign country or of a decree of the executive power of such a country, appointing an agent or attorney with power to execute and deliver in the name or on behalf of such foreign country, any instrument in writing granting, assigning, surrendering or in any manner affecting any estate or interest of such government in real property within this state, or assigning or discharging any lien or claim of such government upon real property within this state, or of a law or decree revoking such an appointment, if in English, or a translation into English of any such law or decree, if the original thereof be in a language other than English, when certified and recorded as hereinafter provided, shall be presumptive evidence of the authority of such agent or attorney. Certification of such copy or translation shall be made under the great seal of such foreign country and shall be to the effect that the same is a true copy or translation of such law or decree. Such copy or translation of such law or decree, when so certified, may be recorded in the office of the clerk or register of any county of this state, and such copy or translation when so

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certified and recorded, or a certified copy of the record thereof, shall be received as evidence in any court of this state. The authority conferred under any instrument so recorded shall not be deemed revoked as to property situated in any county except by the recording in such county of a copy or translation of a law or decree to that effect, duly certified in the manner hereinbefore provided. Nothing in this section shall in any way affect the right or power of a foreign country to acquire, hold or convey real property in this state, or be construed to confer any such right or power.

Derivation: Real Property Law, § 278, as added by L. 1908, ch. 35, § 1.

§ 332. The record of certain conveyances validated.

The record made prior to Januay first, nineteen hundred and sixteen, in the county clerk's or register's office of any county in this state of any deed or mortgage or of any assignment or satisfaction piece of a mortgage otherwise authorized to be recorded therein when the acknowledgment or proof was taken in another county, notwithstanding the failure to append thereto a certificate as to the authority of the notary public, or other officer, who took the acknowledgment or proof, to take the same, shall be in all respects as valid and effectual as though such certificate had been appended to such instrument. Provided only that the notary public, or other officer, was duly authorized at the time of taking the proof or acknowledgment to take the same in the county where the instrument is recorded or in the county where the same was taken, but this section shall not affect any action or proceeding pending on January first, nineteen hundred and sixteen. (Amended by L. 1916, ch. 365, in effect May 1, 1916.)

Derivation: L. 1904, ch. 235, § 1, as amended by L. 1905, ch. 377, § 1.

§ 333*. Execution of certificates of payment and discharge of mortgages.

1. Upon the request of the mortgagor or of any other person interested in the mortgaged premises made at any time that payment thereof is entitled to be made and upon presentation of a satisfaction piece certifying that the mortgage has been paid or otherwise satisfied and discharged and consenting that it be discharged of record, and upon tender of payment of the sum of sums due as principal and interest upon the mortgage or upon the debt or obligation secured thereby, together with the fees allowed by law for taking the acknowledgment of a deed, a mortgagee of real property situate in this state, must execute and acknowledge before a proper officer,

* Sections 333 and 334, added by L. 1910, were probably not considered by the Legislature of 1911 in numbering section 333.

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in like manner as to entitle a conveyance to be recorded, such satisfaction piece, and thereupon deliver the same and the mortgage to the person making such tender of payment as aforesaid.

2. Upon the failure or refusal of any such mortgagee to comply with the foregoing provisions of this section any person having an interest in the mortgage or the debt or obligation secured thereby or in the mortgaged premises may apply to the supreme court or a justice thereof, or to the county court or a judge thereof, in or of any county in which the mortgaged premises or any part thereof are situated in whole or in part, upon a petition, for an order to show cause why an order should not be made by such court canceling and discharging the mortgage of record, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as canceled and discharged, and further ordering and directing that the debt or other obligation secured by the mortgage be canceled, upon condition that the sums tendered pursuant to the foregoing provisions of this section to be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part. Said petition must be verified in like manner as a verified pleading in an action in the supreme court and it must set forth the grounds of the application.

3. In any case where an actual tender, as provided in subdivision one of this section cannot with due diligence be made within this state, any person having an interest in the mortgage or the debt or obligation secured thereby, or in the mortgaged premises, may apply to the supreme court or a justice thereof or to the county court or a judge thereof, in or of any county in which the mortgaged premises or any part thereof are situated in whole or in part, upon petition setting forth the grounds of the application and verified as aforesaid, for an order to show cause why an order should not be made by said court canceling and discharging the mortgage of record, and directing the register or clerk of any county in whose office the same may have been recorded to mark the same upon his records as canceled and discharged and further ordering and directing that the debt or other obligation secured by the mortgage be canceled, upon condition that the principal sum of the mortgage or any unpaid balance thereof, with interest up to the date when said order shall be entered and the aforesaid fees al-

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lowed by law, be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the mortgaged premises are situated in whole or in part.

4. Eight days' notice of the application for either of the orders provided for in subdivisions two and three of this section shall be given to the then mortgagee of record and also, if the petition show that there is a mortgage not of record, to such mortgagee. Such notice shall be given in such manner as the court or the judge or justice thereof to whom the petition is presented may direct, and said court or judge or justice may require such longer notice to be given as may seem proper. If sufficient cause be shown the court or judge or justice thereof may issue such order to show cause returnable in less than eight days.

5. Upon the return day of such order to show cause, the court, upon proof of due service thereof and on proof of the identity of the mortgagee and of the person presenting the petition, shall inquire in such manner as it may deem advisable, into the truth of the facts set forth in the petition, and in case it shall appear that said principal sum or any unpaid balance thereof and interest and the said fees allowed by law have been duly tendered but not accepted and said satisfaction piece has been duly presented for execution, or that such tender and presentation could not have been made within this state with due diligence, then the court shall make an order directing the sums so tendered, or in a case where such tender could not have been made as aforesaid; directing the principal sum or any unpaid balance thereof, with interest thereon to the date of entry of said order and the aforesaid fees allowed by law, be paid to the officer specified by law to hold court funds and moneys deposited in court in the county wherein the application herein is made, and directing and ordering that upon such payment the debt or other obligation secured by the mortgage be canceled and further directing the register or clerk of any and every county in whose office said mortgage shall have been recorded to mark said mortgage canceled and discharged of record upon the production and delivery to such register or clerk of a certified copy of the order and the receipt of such officer, showing that the amount required by said order has been deposited with him, which certified copy of said order and which receipt shall be recorded, filed and indexed by any such register or clerk in the same manner as a certificate of discharge of a mortgage. Said

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receipt need not be acknowledged to entitle it to be recorded. The money deposited shall be payable to the mortgagee, his personal representative or assigns, upon an order of the supreme court or county court, directing the payment thereof to him upon such evidence as to his right to receive the same as shall be satisfactory to the court.

6. Wherever any register or clerk shall record any order and receipt as hereinbefore specified, he shall mark the record of said mortgage as follows:

"Canceled and discharged by order of the..... Court, County of ....., dated .....and filed .....," and thereupon the lien of such mortgage shall be deemed to be discharged and the debt secured thereby shall be deemed to be canceled. Said register or clerk shall be permitted to charge for recording and filing said order and receipt, the same fees to which he is now entitled for recording and filing a certificate of satisfaction of a mortgage.

7. The word "mortgagee" whenever used herein shall be construed to include the mortgagee or any other persons entitled to enforce or satisfy said mortgage and the personal representatives, successors and assigns, of such mortgagee or person, as the case may be. (Added by L. 1911, ch. 574, in effect June 30, 1911.)

§ 333. When conveyances of real property not to be recorded.

After September thirtieth, nineteen hundred and ten, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said September thirtieth, nineteen hundred and ten, unless the residence of the purchaser and if in a city of over five hundred thousand inhabitants according to the last federal census the street number of the residence of the purchaser shall be stated therein and such residence and street number shall be recorded with the conveyance. After May first, nineteen hundred and fourteen, a recording officer shall not record or accept for record any conveyance of real property executed subsequent to said first day of May, nineteen hundred and fourteen, if in a city of over two hundred thousand inhabitants according to the last federal census, unless the street number of the residence of the purchaser shall be stated therein and such residence and street

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number shall be recorded with the conveyance. (Added by L. 1910, ch. 227; amended by L. 1914, ch. 309, in effect May 1, 1914.)

§ 334. Maps to be filed; penalty for nonfiling.

It shall be the duty of every person or corporation who, as owner or agent, subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public, to cause a map thereof, together with a certificate of the surveyor or draughtsman attached showing the date of the completion of the survey and of the making of the map and the name of the subdivision as stated by the owner, to be filed in the office of the county clerk or register of deeds of the county where the property is situated prior to the offering of any such lots, plots, blocks or sites for sale; and a duplicate copy of such map shall also be filed in the office of the city, town or village clerk where the property is situated before any such sale. All such maps must be printed or drawn upon tracing cloth, linen or canvas backed paper. All of such maps shall be placed and kept, by some suitable method, in consecutive order and shall be consecutively numbered in the order of their filing and shall be indexed under the initial letters of all substantives in the title of the subdivision. A failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision, or of the unsold lots therein, to a penalty to the people of the state of twenty-five dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map. (Added by L. 1910, ch. 415; amended by L. 1916, ch. 143; L. 1917, ch. 592, in effect May 21, 1917.)

§ 335. Filing of maps in Suffolk county; penalty for nonfiling.

It shall be the duty of every person or corporation who as owner or agent subdivides real property into lots, plots, blocks or sites, with or without streets, for the purpose of offering such lots, plots, blocks or sites for sale to the public to file or cause to be filed in the office of the county clerk of Suffolk county a map thereof together with a certificate of the surveyor or draftsman attached, showing same to have been made from an actual survey of the property and the date of the completion of the survey. Said map shall set forth the courses, measurements and adjoining property owners with sufficient definiteness to determine the location of said property and the name of the subdivision as stated by the owner. At the time of the filing of such map there shall, also, be furnished to the county clerk a copy of such map which shall be duly certified by him to be a true copy of the original. The certified copy shall be forwarded by said county clerk to the clerk of the town in which said property is located. At the time of filing such map with the county clerk an abstract of title of such property, certified by an attorney and counselor at law of the state of New York, a title company duly incorporated and authorized to transact business in the state of New York or a competent searcher of titles, shall be presented to said county clerk, and be filed in his office, unless the title to said property has been duly registered pursuant to the provisions of the real property law for the registration of titles to real property, in which case this fact shall be set forth upon the original map together with the number of the certificate of the title so registered, and an index of such abstracts and registrations made to clearly indicate the maps to which they refer. Such maps and abstracts of title shall be filed as aforesaid and a copy of said map filed in the town clerk's office of the town where said property is located prior to the offering for sale of any lot, plot, block or site thereon. All such maps must be printed or drawn upon tracing cloth linen or canvas backed paper and the original of such maps filed in said county clerk's office shall be placed and kept by some suitable method in consecutive order, be consecutively numbered in the order of filing and shall be indexed under the initial letters of all the substantives in the title of the subdivision. The fee of the county clerk for such filing, certifying and indexing each map and copy thereof, and abstract of title therewith and forwarding such copy of said map to the town clerk of the town where the property therein described is located, shall be ten dollars and be paid by the party presenting them for filing. Failure to file any such map as required by the provisions of this section shall subject the owner of such subdivision or of the unsold lots therein, to a penalty to the people of the state of New York of twenty-five dollars for each and every lot therein sold and conveyed by or for such owner prior to the due filing of such map and abstract of title as aforesaid. (Added by L. 1919, ch. 226, in effect April 15, 1919.)

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ARTICLE 10.

DISCHARGE OF ANCIENT MORTGAGES.

SECTION 340. When mortgagor may petition for discharge of mortgage of record.
341. Presentation of petition.
342. Order to show cause.
343. Proceedings thereon.
344. When county clerk to discharge mortgage of record.

§ 340. When mortgagor may petition for discharge of mortgage of record.

The mortgagor, his heirs or any person having any interest in any lands described in any mortgage or real estate in this state, which is recorded in this state, or mentioned in a deed recorded in this state, and which, from the lapse of time, is presumed to be paid, or in any moneys into which said lands have been converted under a decree of a court of competent jurisdiction, and which are held in place of such lands to answer such mortgage, may present his petition to the courts mentioned in this article, asking that such mortgage may be discharged of record. Such petition shall be verified; it shall describe the mortgage, and when and where recorded, or if such mortgage is not recorded that the same may be adjudged to have been paid and to be no longer a lien upon the lands therein described, and shall allege that such mortgage is paid; that the mortgagee has, or, if there be more than one mortgagee, that all of them have been dead for more than five years; or if such mortgage has been assigned by an instrument in writing for that purpose executed and acknowledged, so as to entitle the same to be recorded, and such instrument of assignment has been recorded in the office of the clerk of the county where the mortgaged premises, or some portion thereof is situated, and the assignee or assignees of said mortgage have been dead for more than five years, such petition shall state such facts, and no statement respecting the mortgagee or mortgagees or the names and places of residence of their heirs shall be required; or if such mortgagee be a corporation or association, that such corporation or associa-

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tion has ceased to exist and do business as such for more than five years; the time and place of his or their death, and place of residence at the time of his or their death; whether or not letters testamentary or of administration have been taken out, or, if said mortgagee or mortgagees, or assignee or assignees at the time of his or the death resided out of this state, whether or not letters testamentary or of administration have been taken out in the county where such mortgaged premises are situated; or if a corporation or association, its last place of business; the names and places of residence, as far as the same can be ascertained, of the heirs of such mortgagee or mortgagees, or assignee or assignees; or, if such mortgagee be a corporation or association, then the names of one or more of the receivers, if any were appointed, or of the person who has the care of the closing up of the business of such corporation or association, and that such mortgage has not been assigned or transferred, and if such mortgage has been assigned, state to whom and the facts in regard to the same. Provided, however, that if such mortgage has been duly assigned, by indorsement thereof or otherwise, but not acknowledged so as to entitle the same to be recorded, then it shall be competent for the court, at any time within the period aforesaid, upon proof that all the matters hereinbefore required to be stated in said petition are true, and that the assignee of such mortgage if living, or his personal representative if dead, has been paid the amount due thereon, to make and order that such mortgage be discharged of record. Provided, further, that in case of a mortgage which was recorded or adjudged to have been paid and no longer a lien, more than fifty years prior to the presentation of such petition, if the petitioner is unable with reasonable diligence to ascertain the facts herein required to be stated in the petition, other than the fact of payment, the petition may set forth the best knowledge and information of the petitioner in respect thereto and what efforts have been made to ascertain such facts, and if the court shall be satisfied that the petitioner has made reasonable effort to ascertain such facts, and that the same cannot be ascertained with reasonable diligence, it may then, in its discretion, proceed upon said petition as hereinafter provided.

Derivation: L. 1862, ch. 365, § 1, as amended by L. 1901, ch. 287, § 1,

§ 341. Presentation of petition.

Such petition may be presented to the supreme court in the

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county where the mortgaged premises are situated, or to the county court of such county.

Derivation: L. 1862, ch. 365, § 2, as amended by L. 1882, ch. 100, § 1.

§ 342. Order to show cause.

The court, upon the presentation of such petition, shall make an order requiring all persons interested to show cause at a certain time and place, why such mortgage should not be discharged of record. The names of the mortgagor, mortgagee and assignee, if any, the date of the mortgage and where recorded, and the town or city in which the mortgaged premises are situated, shall be specified in the order. The order shall be published in such newspaper or newspapers, and for such time as the court shall direct. The court may also direct the order to be personally served upon such persons as it shall designate.

Derivation: L. 1862, ch. 365, § 3.

§ 343. Proceedings thereon.

The court may issue commissions to take the testimony of witnesses and may refer it to a referee to take and report proofs of the facts stated in the petition. The certificate of the proper surrogate or surrogates, whether or not letters testamentary or of administration have been issued, shall be evidence of the fact; and the certificate of the clerk of the county or counties in which the mortgaged premises have been situate, since the date of the said mortgage, shall be evidence of the assignment of such mortgage, or of a notice of the pendency of an action to foreclose such mortgage, and of such other matters as may be therein stated; or if a notice of the pendency of an action to foreclose such mortgage has been filed, then his certificate that such mortgage has never been foreclosed, unless the allegation of payment shall be denied, and evidence be given tending to rebut the presumption of payment, arising from lapse of time, such lapse of time shall be sufficient evidence of payment. Upon being satisfied that the matters alleged in the petition are true, the court may make an order that the mortgage be discharged of record.

Derivation: L. 1862, ch. 365, § 4, as amended by L. 1882, ch. 278, § 1.

§ 344. When county clerk to discharge mortgage of record.

The county clerk, upon being furnished with a certified copy of such order and paid the fees allowed by law for discharging mortgages, shall record said order and discharge the mortgage of record.

Derivation: L. 1862, ch. 365, § 5.

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ARTICLE 11.

QUIETING TITLE TO REAL PROPERTY.

SECTION 360. When special proceeding to quiet title may be maintained.
361. Petition.
362. Order for publication of notice to persons interested.
363. Owners of several parcels may unite in proceedings.
364. Hearing and final order upon non-appearance of adverse claimants.
365. Hearing and final order upon appearance of adverse claimants.
366. Notice of pendency to be filed and recorded.

§ 360. When special proceeding to quiet title may be maintained.

Whenever real property shall have been conveyed by a sheriff or referee, pursuant to a judicial decree, which decree has been lost or destroyed, and the defendants (other than lienors or incumbrancers) named in the notice of pendency of the action in which such decree was made, or those who might claim under them, or either of them, are dead, unknown or their whereabouts cannot after diligent inquiry be ascertained, the person who has been, or he and those having his estate who have been, for thirty years in actual possession of such property claiming it in fee under said sheriff's or referee's deed, which deed shall have been recorded at least thirty years, may maintain a special proceeding for the purpose of establishing judicially his or their title to such real property.

Derivation: L. 1890, ch. 503, § 1.

§ 361. Petition.

A person or persons, desiring to institute a proceeding under this article, must present a petition to the supreme court at a special term to be held in the judicial district in which the real property is situated, setting forth the facts proving to the satisfaction of the court, that the case is one of those specified in section three hundred and sixty, and must describe the property with common certainty, and state what, if any, liens or incumbrances exist thereon, and the names of the persons, if any, besides the petitioners, who have been in the actual possession of the property

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during the past thirty years claiming title as owners thereof in fee, and how such title was derived, and shall also annex to said petition a duly certified copy of the sheriff's or referee's deed recorded thirty years since under which petitioners claim title.

Derivation: L. 1890, ch. 503, § 2.

§ 362. Order for publication of notice to persons interested.

Upon the presentation of such petition, duly verified in the manner prescribed for the verification of pleadings by the code of civil procedure, the said court shall make an order for the publication of a notice requiring all persons claiming any interest in the real property described in such petition to appear before the court at a special term thereof, to be held at a time and place to be therein specified, not less than three months nor more than six months thereafter, and show cause, if any they have, why they should not be forever barred from maintaining any action or proceeding for the recovery of the real property, which shall be substantially described as set forth in said petition, and which notice shall also contain a reference to the time and place of record of the sheriff's or referee's deed referred to in this article. Said publication shall be made once a week for three months successively prior to the return day named in said notice in two newspapers designated in the order as most likely to give notice to any claimant of the property. (Amended by L. 1909, ch. 240, § 70, in effect April 22, 1909.)

Derivation: L. 1890, ch. 503, § 3.

§ 363. Owners of several parcels may unite in proceedings.

In case the property described in said sheriff's or referee's deed shall have been subdivided, the owner or owners of the several parcels thereof may unite in the same petition and proceeding provided for by this article.

Derivation: L. 1890, ch. 503, § 4.

§ 364. Hearing and final order upon non-appearance of adverse claimants.

Upon the return day named in said notice the court shall proceed summarily to inquire into the truth of the matters set forth in the petition, and may appoint a referee for that purpose, and if there shall be no appearance by any person claiming any adverse interest to the petitioners in the real property described in the petition, the court may make a final order declaring that the title of the petitioner to such real property has been judicially established, which final order, together with the petition and order for

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and proof of publication of the notice, and the proofs taken before the court or referee shall be filed in the office of the clerk of the county in which the real property is situated, and such final order shall be evidence of the facts so declared to be established thereby in all courts and places, and thereafter no action or proceeding for the recovery of the real property described in said final order or any part thereof, or of any interest therein, shall be maintained by any person named as a defendant in the notice of pendency of action referred to in section three hundred and sixty, or by any person or persons claiming under such defendant or either of them.

Derivation: L. 1890, ch. 503, § 5.

§ 365. Notice and final order upon appearance of adverse claimants.

If any person shall appear on the return day of said notice and claim in writing an interest in the real property adverse to that of the petitioners, stating the nature of his claim and his place of residence, the court may proceed in like manner to inquire into the truth of the facts stated in the petition and may make a final order in like manner and with like effect as above provided, except that such final order shall not affect in any way any person who shall have appeared on the return day and asserted a claim adverse to the petitioners, as herein provided for.

Derivation: L. 1890, ch. 503, § 6.

§ 366. Notice of pendency to be filed and recorded.

No such final order shall be made until the petitioners named in said proceedings, or their attorney, shall file in the clerk's office of the county in which such real property is situated a notice of the pendency of the said special proceeding, containing the names of all the persons claiming to be then owners of the property in fee, pursuant to said sheriff's or referee's deed, the object of the proceeding, together with a brief description of said property. Each county clerk with whom such notice is filed must immediately record it in the book kept in his office for recording of notices of pendency of an action, and index it to the name of each person claiming to be owner as aforesaid, and said clerk shall be entitled to receive for his services the same fees therefor as are now allowed by law for filing, recording and indexing a notice of pendency of action.

Derivation: L. 1890, ch. 503, § 7.

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ARTICLE 12.

REGISTERING TITLE TO REAL PROPERTY.

SECTION 370. Petition to register title to real property.
371. Petitions and proceedings to be in the supreme court; title part of special term.
372. County clerks and registers to be registrars of title.
373. Registrar's bond.
374. Deputy registrars' powers and duties.
375. Compensation of registrars and deputy registrars, official examiners of title, and registration clerks.
376. Disposition of fees received by registrar.
377. Official examiners of title.
378. What owners may apply; what titles may be registered.
379. Contents of petition for registration; other papers to be filed.
380. Official examiner's report of title; other evidences of title.
381. Survey, map, or plan to be filed.
382. Notice of petition and of pendency of proceeding.
383. Filing of caution.
384. Agent of nonresident petitioner.
385. Proceedings upon the petition; notice of hearing.
386. Form of notice to parties.
387. Summons and notice to be posted on the land.
388. Guardian ad litem.
389. Any person interested may appear and defend.
390. Title in lands vested; clouds thereon removed.
391. Final orders conclusive; to be entered and docketed as a judgment.
392. Fraud; action to set aside the final order or judgment or to recover the property.
393. Registration of title.
394. Certificate of title.
395. Title book.
396. Duplicate certificate of title.
397. Owner's receipt for certificate of title.
398. Certificate to include dealings pending registration.
399. Certificate of title as evidence.
400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.
401. Registered property not affected by prescription or adverse possession.
402. Fraud; notice only by registration.
403. Memorial to be carried forward.
404. Registered property to remain registered.
405. Registered property subject to same rights and burdens as unregistered property.
406. Transfers of registered property.

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SECTION 407. Certificate as to part of property remaining after transfer.
408. Book of covenants, restrictions, trusts and forms.
409. Filing, entering and indexing papers pursuant to this act; tickler certificate.
410. Notice of filed papers.
411. Addresses of interested parties; notice.
412. When a transfer is deemed to be registered.
413. New certificates of title.
414. Loss of owner's duplicate.
415. Mortgages, leases and other liens and charges; may be registered.
416. Proceedings to register mortgage, lease or other lien or charge.
417. Judgments, decrees, attachments and other liens to be noted on certificate.
418. Assignment of mortgage, lease, or other lien or charge.
419. Release, discharge or surrender of charge or incumbrance.
420. Enforcement of mortgages, charges, liens and incumbrances.
420a. Registration under judicial sales.
421. Powers of attorney to be filed and registered.
422. Reference of doubtful matters to the court.
423. Death of owner of registered property; transfer of property.
424. Certificate of title during settlement of estate.
425. Title derived through execution of a power in a will.
426. Assurance fund.
427. Compensation from assurance fund.
428. Action against assurance fund.
429. Restrictions on claims against assurance fund.
430. Penalties for fraudulent acts or false certificates.
431. Forgery and fraudulent stamping; penalty.
432. Fees to be charged.
433. Construction of article.
434. Form for official examiner's report of title.
435. Form for certificate of title.

§ 370. Petition to register title to real property.

Real property, or any estate, interest, or right therein, the title to which is hereby authorized to be registered, may be brought under the operation of this article by the filing of a verified petition praying for registration, with the clerk of the county in which the land, or some portion thereof, is situated. The petition may be so made in person by the owner or owners of such property, estate, interest, or right, or, where special circumstances are shown making it impracticable for the owner to make such petition in person, by an agent acting under a power of attorney acknowledged in the same manner as a deed to be recorded. A corporation may also apply by its duly authorized officer or agent. An infant or other person under disability may apply by his legally appointed guard-

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ian, or trustee, or committee. The natural person or corporation, in whose behalf the petition is filed may be known, and is treated in this article, as the petitioner. Any other party to the proceeding may be known as a defendant. (Amended by L. 1910, ch. 627; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 2.

§ 371. Petitions and proceedings to be in the supreme court; title part of special term.

The petition for registration must be made to the supreme court; or to a justice thereof, sitting at a special term in any of the counties within the judicial department where the property is situated, and for that purpose said court shall be always open; and its orders, judgments and decrees in cases coming under this article may be made and entered as well in vacation as in term time. The proceedings upon such petitions shall have the effect of proceedings in rem against the land, and the final orders shall have the effect of final judgments in an action and shall operate directly on the land and vest and establish title thereto. An issue raised in such a case shall be tried at a special term of said court, in the county in which the petition is filed, by the court, except that an issue of fact may be tried by a jury, in the manner prescribed by the constitution and code of civil procedure. When in any county the amount of business under this article makes it necessary or proper that such business should be attended to by one or more justices of said court assigned for that purpose, the appellate division of the judicial department in which such county is situated shall designate as many justices as may be deemed necessary, to constitute the "title part" of the special term in that court; and said appellate division shall provide by rules of practice for the conduct, in said title part, of the business coming under this article in such county. Said appellate division may assign one or more additional justices to said "title part" of the special term, or withdraw one or more justices therefrom, as the business coming under this article may require and the availability of the supreme court justices make proper. One of the justices so assigned to the "title part" of the special term in any county shall be designated by said appellate division to have general supervision and control of the business coming under this article in that county; and so far as is reasonably possible, such designation shall remain

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unchanged, and such justice shall be retained continuously in such term and part during his term of office unless in the opinion of the appellate division a change is required for the better enforcement or working of this law. One and the same justice may be assigned so as to have such general supervision and control in two or more counties of the judicial district for which he is elected. Other duties may be assigned by such appellate division to such justice, provided that they do not interfere with his work in supervising and controlling the business coming under this article. The justice assigned, as herein provided, to have general supervision and control of the business coming under the article in any county, shall also have general supervision and control of all the official examiners within such county and it shall be his duty to observe and supervise their work as such official examiners, to advise them when necessary and to make any suggestions or recommendations to the appellate division with respect to discipline, suspension or removal of any of them as to him may seem necessary or proper in the interests of the successful operation of this law. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 3.

§ 372. County clerks and registers to be registrars of title.

County clerks in the several counties of the state, except the counties that may have registers, and in the latter counties the registers of said counties shall be "registrars" of titles in their respective counties. All laws relative to registers, county clerks and their deputies shall extend to registrars and their deputies, so far as the same may be applicable, except as in this article otherwise provided. Registrars of titles shall be county officers, within the meaning of the laws of this state.

Derivation: L. 1908, ch. 444, § 4.

§ 373. Registrar's bond.

Every registrar, before entering upon his duties as registrar, shall give a bond with sufficient security, to be approved by a justice of the supreme court, payable to the people of the state of New York, in a penal sum the same as that for his bond as register or county clerk, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of

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titles, whole, safe and undefaced, when lawfully required so to do, which bond shall be filed in the office of the secretary of state.

Derivation: L. 1908, ch. 444, § 5.

§ 374. Deputy registrars' powers and duties.

In any county where the business under this article so warrants, the registrar may appoint a chief deputy and as many other deputies as are needed. But no one unless he is also a deputy register or an assistant deputy register appointed under statutory authority, or a deputy county clerk, shall be appointed as such reputy registrar unless he has qualified as an official examiner of title as described and required by section three hundred and seventy-seven of this chapter.

Deputies may perform any and all duties if the registrar in the name of the registrar, and the acts of such deputies shall be held to be acts of the registrar, and in case of the death of the registrar, or his removal from office, the chief deputy shall thereupon become the acting registrar until such vacancy shall be filled according to law, and he shall file a like bond and be vested with the same powers and subject to the same responsibilities and entitled to the same compensation as in the case of the registrar. (Amended by L. 1909, ch. 305; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 6.

§ 375. Compensation of registrars and deputy registrars, official examiners of title, and registration clerks.

Where county clerks and registers are salaried officials, the local authorities (county officials who provide for county expenses, in the city of New York, the board of aldermen upon the recommendation of the board of estimate and apportionment) shall fix their additional compensation as registrars, also the compensation of deputy registrars, official examiners of title, the clerks, et cetera, needed to carry on the work under this article. Where a county clerk or a register is compensated directly by the fees paid to himself, his deputies and assistants, the fees paid to him as registrar shall take the usual course and be used to compensate deputies, official examiners of title, clerks, et cetera, at such rates as the registrar may fix, the remainder to belong to him. (Amended by L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 7.

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§ 376. Disposition of fees received by registrar.

All fees received by the registrar, for the performance of the duties devolving upon him and upon the official examiner of titles pursuant to this article, shall be disposed of in the same manner as are fees paid to county clerks and registers. It shall be the duty of the local authorities who provide for county expenses to provide such accommodations, help, safes, books, papers and for such other expenses as may properly be required by the registrar in the conduct of his office. (Amended by L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 8.

§ 377. Official examiners of title.

The registrar in any county is authorized to appoint one or more official examiners of title who shall be qualified in accordance with the provisions of law and such rules as may be adopted by the court of appeals. The court of appeals shall prescribe such rules as it deems expedient with respect to ascertaining the fitness and qualifications of individuals for appointment as official examiners of title. Such rules may provide that the length of time during which candidates have practiced law and the experience they have had in the examination of titles to real property shall be taken into consideration in determining their qualifications. Every official examiner of title must be an attorney and counselor-at-law of this state. Subject to rules hereafter adopted by the court of appeals, attorneys and counselors-at-law hertofore duly licensed as official examiners of title shall be eligible for appointment as official examiners of title.

In case the registrar shall fail to appoint an official examiner of title in any county, the justice of the supreme court to which petition is made to register any land in such county, may appoint a competent atorney to act as such official examiner of title upon that petition. Any official examiner of title shall have power to hold investigations necessary to determine questions of fact arising in the course of his examination of any title, may summon witnesses and examine them under oath with regard thereto, and may at any time apply to the supreme court for directions, and receive its assistance, in regard to any investigation conducted by him. The appellate division of the supreme court may admonish, discipline, suspend or remove any official examiner, because of

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any dishonesty, incompetency, neglect of duty or any other improper conduct or omission, either on its own motion, or on the suggestion or recommendation of the justice of the supreme court having general supervision and control of the business coming under this law in the county in which such official examiner is appointed; and it shall be the duty of said appellate division to co-operate with such justice in endeavoring to retain the highest possible standard of ability, efficiency and honest service for all official examiners acting under and pursuant to this law.

No person who is the attorney or counsel or otherwise interested in a proceeding to register titles to real property, shall act as official examiner of title in such proceeding. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 9.

§ 378. What owners may apply; what titles may be registered.

Petition for registration of title may be made by the following persons: First. The person or persons who claim, singly or collectively, to own in fee simple the legal estate in land, or in some right in or over land, and who hold and possess such land or such right.

Second. The person or persons who claim, singly or collectively, to own a contract for the purchase in fee simple of the legal estate in land, or in some right in or over land, from the owner thereof. Such contract must be with the owner of the fee and acknowledged as a deed to be recorded, and must be filed with the petition. Registration in the name of the holder of the contract shall not be made, except on the production of a proper transfer of title under and pursuant to the contract from a transferer in possession, or the consent in writing, duly acknowledged, of the proposed vendor in possession and named in the contract and his wife, if he be married. Such transfer or consent may be made after the commencement of the registration proceeding.

Third. The person or persons who claim, singly or collectively, to have the power of appointing or disposing in fee simple of the legal estate in land, or in some right in or over land.

No title to a mortgage, lien, trust, charge or estate less than a fee simple shall be registered, unless the title to the legal estate

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chase, it shall refer to the ownership of the proposed vendor, and to the contract of purchase and sale.

It shall not be an objection to bringing real property under this article that the estate or interest of the petitioner is subject to any outstanding lesser estate, mortgage, trust, charge, or other lien or right. But any such lesser estate, mortgage, trust, charge, or other lien or right shall be duly noted on the certificate of title when issued. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 10.

§ 379. Contents of petition for registration; other papers to be filed.

The petition for registration shall be verified in the manner prescribed in the code of civil procedure for a complaint and shall set forth, in addition to any other proper allegations:

(a) The name and place of residence with street number, if any, and post-office address of each of the petitioners, and when made by one acting in behalf of another, the name, place of residence and street number, if any, and post-office address and capacity of the person so acting.

(b) Whether or not each of the petitioners (except in case of a corporation) is married, and, if married, the name, place of residence and street number, if any, and post-office address of the husband or wife, and, if unmarried, whether he or she has been married, and if he or she has been previously married, when and how the previous marriage relation terminated, and, if the previous marriage was terminated by annulment or divorce, when, where and by what court the annulment or divorce was granted, and for the misconduct, if any, of which party it was granted, and the nature of the misconduct, if any, for which it was granted.

(c) That each of the petitioners is of the full age of twenty-one years and free from any disability, or, if he is a minor or under disability, his age or the nature of such disability, and the authority of the person by whom his petition is made.

(d) The names and places of residence with street number, if any, and post-office addresses of all persons having or claiming any interest in or lien upon the property, or any part thereof, the title to which is sought to be registered, and whether or not any of them are infants or otherwise incapacitated; the owners in fee simple of the surrounding contiguous properties, and their

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post-office addresses so far as they are known or can be reasonably ascertained by inquiry on such property; the people of the state of New York; all persons who have filed any caution or cautions against the registration of such property, as provided by section three hundred and eighty-three of this chapter; and a designation of all other possible owners and claimants of the property or any right or interest in or lien upon the property of any part thereof as "all other persons, if any, having any right or interest in or lien upon the property affected by this proceeding, or any part thereof." The petition shall state so far as is known to the petitioner, what claim, if any, the state of New York makes to the property in question or what interest, if any, it has therein other than the general governmental interest or such as exists as to all land in private ownership.

(e) An adequate description of the land and whether vacant or improved, and if improved, the nature of the improvement, and if occupied, the names of the occupants and the nature of their occupancy except as to tendencies under leases for periods not exceeding one year.

(f) A statement of the estate, interest or right claimed by the petitioner in the property the title to which is sought to be registered; the value of the property on the basis of the last assessment for local taxation, and any mortgage or other encumbrance, lien, restriction, easement, claim or interest to which the title is subject so far as known to the petitioner.

(g) A prayer that the title be duly registered, as belonging to and vested in the petitioner, or as the facts may require at the time of such registration.

The court may require the petition to be amended and reverified as the circumstances of the case may demand or make proper. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 11.

§ 380. Official examiner's report of title; other evidences of title.

Immediately upon the filing of the petition the court shall enter an order referring the matter to one of the official examiners of title appointed in the county as provided in section three hundred and seventy-seven of this chapter and directing the registrar to give notice of the hearing upon the petition as pro-

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vided in section three hundred and eighty-five of this chapter, to the parties named in the petition. The order shall also direct the registrar to give such notice to such additional persons as the preliminary report of the official examiner of title shows should be made parties to the proceeding, unless the petitioner shall file with the registrar a waiver of the requirement that any such additional persons be made parties to the proceeding and a request that such notice be given forthwith to the parties named in the petition. In case such waiver and request is filed the registrar shall give such notice only to the persons named in the petition as parties to the proceeding. In any event, however, the determination of the question as to sufficiency of parties and as to due service of notice shall be for the court as herein provided. As soon as possible after the petition is referred to him the official examiner of title shall file a preliminary report with the registrar as to the sufficiency of the parties named in the petition and as to what additional persons, if any, should be made parties to the proceeding. The official examiner of title shall forthwith proceed to examine the title and investigate the facts stated in the petition or otherwise brought to his notice, and shall make a report in writing to the court of the substance of the proof and his conclusions therefrom.

The court, in its discretion upon the request of the petitioner, may omit referring the matter to an official examiner of title and in lieu thereof may accept a report on title made and certified to by a title insurance, abstract or searching company, organized and doing business under the laws of this state; the procedure in other respects shall be the same as herein provided and the said report shall be the same in form and contents as required herein for the report of an official examiner of title and shall be guaranteed by such company for an amount not less than the amount of the last assessment of the property for local taxation; which guarantee shall inure to the benefit of the county in which the property is situated and shall be recoverable upon by the county treasurer (in New York city by the city chamberlain).

Said official examiner's report shall set forth the exact state and condition of the title sought to be registered, and the names, places of residence with street number, if any, and post-office addresses as far as known or reasonably ascertainable, and the

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rights or interests, or claimed rights or interests, of the petitioner and of all other persons having or claiming any rights or interests in or liens upon said property or any part thereof; it shall contain a statement as to whether all proper parties in interest have in fact been served with the notice as provided in section three hundred and eighty-five of this chapter and if so in what manner, and the recommendation of the official examiner of title as to whether further notice should be required as to persons residing within or beyond the state from whom registered return receipts for the notice of hearing have not been received; it shall contain a proper reference to the survey, map or plan provided for in section three hundred and eighty-one of this chapter and a statement of all encroachments, if any, on any surrounding contiguous property and the names, places of residence with street number, if any, and post-office addresses of the owners in fee simple of such surrounding contiguous properties, as far as they are known or can be reasonably ascertained by inquiry on said properties; and, as to actual or possible owners or claimants of the property sought to be registered, not known or not found, it shall state fully what search and efforts have been made to find them. All possible owners or claimants of the property sought to be registered, or of any right or interest therein or lien thereon, or in or on any part thereof, who cannot be otherwise described, shall be designated in the report, and in the notice of hearing on the petition, by the expression "all other persons, if any, having any right or interest in, or lien upon the property affected by this proceeding, or any part thereof." By the statements of facts contained in said report of title, or by separate accompanying affidavits, or by any other additional evidence, if necessary, or by any or all of these, sufficient facts must be shown to satisfy the court that all owners and claimants of the property sought to be registered, or of any right or interest in or lien upon the same or any part thereof, who could be found by diligent inquiry are duly and specifically named and made parties to the proceeding. The question of the sufficiency of the proof that all such owners and claimants who could be found by diligent inquiry are duly and specifically named and made parties to the proceeding and that they have been duly served with notice of hearing, shall be for the court; its decision that such proof is sufficient shall be shown by its making an order

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approving the examiner's report of title or the final order for the registration of the title, and such decision or order shall not be drawn in question after thirty days from the time when the final order in the proceeding is entered. The abstract of title and the searches made or used by the official examiner in the process of his work of examining the title and all the other proper evidences of the due examination of the title, shall be filed, immediately upon the entry of the final order, in the office of the registrar of the county unless otherwise directed by the court and the same shall be open to the inspection of any interested person and shall be subject at all times to the direction of the court. The examiner's report of title shall contain a short form of description of the property, the title to which is sought to be registered, which form is to be used in the notice provided for by section three hundred and eighty-six of this chapter. Said examiner's report shall contain, or be accompanied by, any other or further information that the court may prescribe, and shall be in such form as the court may order or as the court of appeals may prescribe in its rules. The examiner of title may receive in evidence and may base his report upon any official search or abstract or any search or abstract issued in regular course of business by any corporation duly organized under and by virtue of the laws of this state and by said laws duly authorized to make and to certify to searches and abstracts of title or to guarantee or insure titles to real property in this state. It shall be the duty of any public official forthwith to certify the returns of any search upon the requisition of any official examiner of title. Where the title to the premises sought to be registered is in whole or in part the same as that of another parcel of land title to which has been registered, reference to the earlier abstract on file in the county in which the petition is filed may be made by the official examiner in place of duplicating the matters therein contained. Reference to official searches duly filed in the county in which the petition is filed may be made by the official examiner in place of duplicating the matters therein contained. The papers so referred to shall have the same effect as evidence and proof in the proceeding as said official examiner's report of title, or said searchers, as the case may be. Where the petition seeks registration of a title subject to restrictive covenants or agreements, it shall not be neces-

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sary to name or serve those persons who have or claim rights to enforce such covenants and agreements, but unless such persons are named and served the final order of registration must direct that title be registered subject to such covenants and agreements. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1920.)

Derivation: L. 1908, ch. 444, § 12.

§ 381. Survey, map, or plan to be filed.

There shall be filed with the petition or with the official examiner of title and by him incorporated in his report of title a survey, map or plan of the land the title to which is sought to be registered, which shall be made by a competent surveyor and shall be subject to the approval of the court, and which shall clearly show the exact boundaries of the land and its connection with adjacent lands and any adjoining or neighboring streets and avenues, and the distance from such adjoining or neighboring streets or avenues, and all encroachments, if any, and all other facts which are usually shown by accurate surveys. If any adjacent land is already registered, the survey must properly connect and harmonize with the survey of such previously registered land. There shall be attached to said survey, map, or plan, and filed with it, an affidavit of the surveyor by whom it was made, that it was made by him personally or under his immediate supervision and direction; that it is a survey, map or plan of the property described in the petition or the official examiner's report of title, and that according to the best of his knowledge and belief said property is included in the boundaries shown on such survey, map or plan, without any encroachments or improper erections, except as follows (stating and describing any encroachments or improper location of buildings, fences or other structures). (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 13.

§ 382. Notice of petition and of pendency of proceeding.

At the time when the petition for registration of any property is filed, the petitioner shall also cause to be filed a notice thereof in the office of the county clerk and registrar of each county where the property is situated, which notice shall be made and filed in the manner prescribed for a notice of pendency of action

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by section sixteen hundred and seventy of the code of civil procedure, and shall be indexed against the names of the petitioner and all known adverse parties or claimants except the owners of abutting properties, and shall constitute notice of the pendency of the petition and of the proceeding, and shall be governed in all respects by the same rules as a notice of the pendency of an action under sections sixteen hundred and seventy to sixteen hundred and seventy-four inclusive of the code of civil procedure, except that, if the petition be dismissed, or the proceeding discontinued, or in any way terminated other than by registration of the title, no order for the cancellation of such notice shall be made by the court until it is duly and fully proved to the court that the provisions of section four hundred and ten of this chapter have been fully complied with and performed. The notice of pendency of proceeding filed with the registrar, as provided in this section, shall also be noted on the "tickler certificate book" as a petition and said notice shall be treated as, and take the place of, the petition in all cases in which this act requires the registrar to deal with the petition and shall be given a petition number, beginning with number one for the first petition filed and so on in numerical order, and also a serial number. In any place, however, where there is a block or lot system of indexing in use the said notice shall be indexed according to such system. The notice shall be substantially in the form provided by section three hundred and eighty-six of this chapter. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 14.

§ 383. Filing of caution.

Any person claiming to have any right or interest in or lien upon any real property or any part thereof the title to which has not been registered, may file with the registrar a written notice, to be styled a "caution," that he requires written notice to be given to him of the filing of any petition for the registration of the title to said real property. In such notice he shall show how he claims title, right, interest or lien, and shall give his own place of residence with street number, if any, and his post-office address, and that of a person (who may be himself or not), upon whom the notice may be served. In case any petition to register said title is filed, ser-

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vice of such notice shall be made within ten days after the petition is filed, by mailing said notice securely inclosed in a post-paid wrapper and directed to the person indicated at the place named. A like cautionary notice may be required by the owner of any land, as to the registration of the title of any or all of the land abutting upon his land, with the like proceedings in all respects. There shall be kept by the registrar a locality index of the cautionary notices, in which the same shall be indexed under the name of the street or road upon which the property referred to in the notice abuts, or if it abuts upon none, under the name of the street or road which is nearest to it. In any place, however, where there is a land map dividing the property into numbered blocks, the index shall be made by block numbers; and if any system of indexing by lot numbers is used, the index lot numbers shall be shown. Such caution shall not be notice, except in a proceeding under this article. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 15.

§ 384. Agent of nonresident petitioner.

If the petitioner is not a resident of the state, he shall file with his petition a paper appointing an agent residing in the state, giving his name in full, place of residence with street number, if any, and post-office address, and shall therein agree that the service of any legal process, in proceedings under or growing out of the petition, shall be of the same legal effect, if made on the said agent, as if made on the petitioner within the state. If the agent dies, or becomes incapacitated, or removes from the state, the petitioner shall forthwith make another appointment; and if he fails to do so within a reasonable time, the court may dismiss the petition. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 16.

§ 385. Proceedings upon the petition; notice of hearing.

Immediately upon the filing of the petition and of the notice thereof as provided in section three hundred and eighty-two of the chapter, and upon receiving the preliminary report of the official examiner of title as to the sufficiency of parties or the waiver thereof by the petitioner as provided in section three hundred and

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eighty of this chapter, the registrar shall cause a notice, fixing the time and place at which the petition will be heard, to be published in a newspaper published in the county in which the land is situated. The return day of said notice shall be not less than twenty days nor more than sixty days after the date of publication. The registrar shall also, within seven days of the publication of said notice in a newspaper, cause a copy of said notice to be sent by registered letter, demanding a return, to every party to the proceeding whose address is known. The court may also cause other or further notice of the petition to be given. The court shall, so far as it considers it possible, require proof of actual notice to all adjoining owners and to all owners who appear to have any interest in, or claim to, the land included in the petition. Notice to such persons by mail shall be by registered letter, demanding a return. The registrar shall also cause the notice of such proceeding and hearing to be posted, at least fourteen days before the return day, in a conspicuous place on each parcel of land affected by the proceeding. The certificate of the registrar that he has served the notice as directed by the court, by publishing and mailing, and that the notice has been duly posted upon the land, shall be filed in the case, with affidavits in support of same, on or before the return day, and shall be proof of such service. The expense of the publication, the mailing and the posting on the land of the notices shall be paid by the petitioner. Upon the return day the hearing may be adjourned from time to time by the court on its own motion, or on the motion of the official examiner of title, or of any party. Service of notice upon the people of the state of New York may be made by mailing a copy of said notice securely inclosed in a post-paid wrapper and directed to the attorney-general of the state of New York. Unless the court otherwise directs no report shall be made upon the petition until the time specified in the notice of the hearing on the petition, and, if any adverse claimant or objector appears, the report shall not be confirmed until opportunity is given to contest the rights of the petitioner in such manner as shall be allowed by the court. The court may refer to the official examiner of title any controverted matter or question for hearing and report. Default shall be noted on the failure to appear of any of those on whom the notice of hearing has been served and upon

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petition to the court a final order of registration may be entered at once on the failure to appear and object of all persons so served. The examiner's report on title upon being presented to the court shall be prima facie and presumptive evidence of the facts stated therein; and all statements in the report shall be taken and construed as statements of fact, unless they are expressly declared therein to be conclusions or opinions. In no case shall the court be bound by the report of an examiner of title but may require other or further proof. If any party to the proceeding controverts any statement contained in the examiner's report, the facts controverting such statement must be specifically pleaded and set forth and must be established affirmatively by the party pleading or setting forth the same. The trial of any issue raised shall be governed by and shall proceed according to the laws of this state and the rules of court in so far as the same are not expressly abrogated or modified by this article. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 17.

§ 386. Form of notice to parties.

The notice to be served upon the parties to the proceeding required by section three hundred and eighty-five shall be issued by the order of court and subscribed by the registrar, and shall be in form substantially as follows:

REGISTRATION OF LAND TITLE.

Supreme Court:.....County.

In the matter of the petition of (here insert name, place of residence with street number if any, and post-office address of petitioner) to register the title to certain lands described as follows (here insert description of land).

To (here insert the names of all other parties to the proceeding).

To all whom it may concern:

Pursuant to the order of the Hon.....made herein, take notice, that at ..... in said county of ..... on the ....., day of ....., nineteen hundred and ....., at ..... o'clock in the forenoon the petition above mentioned will be heard and unless you appear at said time and place and show cause why such petition shall not be granted,

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your default will be noted and a decree will be entered according to the prayer of the petition and you will be forever barred from contesting said petition or any decree entered thereon.

Witness Hon. ....., Justice of said court, this ..... day of ....., in the year nineteen hundred and ....., Registrar of the county of .....

(Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 18.

§ 387. Summons and notice to be posted on the land.

(Amended by L. 1910, ch. 627; repealed by L. 1918, ch. 572, in effect May 8, 1918.)

§ 388. Guardian ad litem.

In any proceeding to register title, the court may make an order appointing a disinterested attorney, other than the official examiner by whom the title was examined and reported and certified, to act as guardian ad litem for all minor persons and for all persons under other disability appearing by the petition or by the examiner's report of title to have interests adverse to those of the petitioner. The petition for the appointment of said guardian may be made by the petitioner ex parte at any time upon or after the return day of the notice. The guardian ad litem thus appointed upon the application of the petitioner shall be the attorney-general of the state of New York, unless it appears to the court that the state of New York has or claims some interest adverse to that of the person or persons for whom the attorney-general would thus be appointed guardian ad litem. The question as to the existence of such adverse claim or interest shall be for the court; and an order appointing the attorney-general as such guardian ad litem shall be sufficient proof that no such adverse claim or interest exists. Such an order shall not be drawn in question after thirty days from the time when the final order or judgment in the proceeding is entered. It shall be the duty of any such guardian ad litem actively to ascertain and protect as is reasonably possible, the interests of all minor parties to the proceeding and all other parties under disability. The compensation of such guardian shall be fifteen dollars, unless the court direct

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otherwise; but the attorney-general shall not receive any compensation for acting as such guardian ad litem. Any other guardian ad litem may also be appointed in the manner set forth in the code of civil procedure for any of the parties to the proceeding who are infants or persons incapacitated. No issue requiring a trial shall be raised by the answer of a guardian ad litem of any minor party or party under other disability unless it shall affirmatively appear by the official examiner's report or by the answer of the guardian ad litem that such minor party or party under other disability has an interest adverse to the title or interest sought to be registered. (Former § 388 repealed and new § 388 inserted by L. 1910, ch. 627; amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 20.

§ 389. Any person interested may appear and defend.

Any person interested in the property, or whose interests may be affected by the final order or judgment in the proceeding, whether specifically named in the notice or not, may enter his appearance and may file any objections on or before the return day or within such further time as shall be allowed by the court, and may oppose the petition for registration of the property as belonging to the petitioner, or set up a cross-demand to have the title registered in his own behalf. In either case, he shall state particularly what his interest is and shall specifically state all objections to the petition. (Amended by L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 21.

§ 390. Title in lands vested; clouds thereon removed.

In any proceeding under this article, the court may find and decree in whom the title to or any right or interest in the property or any part thereof is vested, whether in the petitioner, or in any other person, and may remove clouds from the title, and may determine whether or not the same is subject to any lien or incumbrance, estate, right, trust or interest, and may declare and fix the same, and may direct the registrar to register such title, right, or interest, and in case the same is subject to any lien, incumbrance, estate, trust or interest, may give directions as to the manner and order in which the same shall appear upon the cer-

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tificate of title to be issued by the registrar, and generally in such a proceeding, the court may make any and all such orders and directions as shall be according to equity in the premises and in conformity to the principles of this article. But no final order or judgment of registration of a title shall be made or entered until proof is duly made in the proceeding by the report of an official examiner and by the certificate or receipt of the officer entitled to collect the taxes, assessments or water rents, that all taxes, water rents and assessments that may at that time be a lien on the property, right or interest the title to which is so registered, have been fully paid and discharged, unless the court directs the title to be registered subject to any such tax, water rent or assessment, which said tax, water rent or assessment must then be noted on the certificate of title. Where the title to be registered is subject to restrictive covenants or agreements, and it shall appear to the court either that said restrictive covenants or agreements have been violated or that by reason of the proper parties not having been joined the court should not proceed to determine whether said restrictive covenants or agreements have or have not been violated, then in either case title may nevertheless be registered; but the final order or judgment of registration must direct the registration to be "subject to any question as to whether covenants (specifying them) have been violated," and the certificate of title shall so note; and then the rights in respect to such covenants of any person interested therein shall not be affected by such final order or judgment or registration. When the land the title to which is to be registered abuts upon any street, avenue, road or way the final order or judgment of registration may provide for the registration of the petitioner's interests or rights in and to such street, avenue, road or way; but if such final order or judgment fail so to provide, then the interests or rights of the petitioner in such street, avenue, road or way shall become and be parcel of or appurtenant to the property registered, and shall be included in any conveyance of or incumbrance or lien upon such registered property, unless it is expressly reserved in or excepted from such conveyance, incumbrance or lien. Such express reservation or exception shall be effected only by a clause directly reserving or excepting such interests or rights in such street, avenue, road or way and shall not be implied from the language used in any description of the

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registered property subsequent to the initial registration thereof. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 22.

§ 391. Final orders conclusive; to be entered and docketed as a judgment.

No final order or judgment of registration shall be made, unless the court is satisfied that the title to be registered accordingly is free from reasonable doubt. The final order entered upon an application for registration is deemed to be a final judgment and may be entered and docketed and enforced as a final judgment in an action. Before the final order can be docketed, an enrollment must be filed thereupon as the judgment roll in an action, as provided in section three hundred and ninety-three of this chapter. The judgment and any order made and entered in a proceeding under this act shall, except as herein otherwise provided, be forever binding and conclusive upon the state of New York and all persons in the world, whether mentioned and served with the said notice specifically by name, or included in the description, "all other persons, if any, having any right or interest in, or liens upon, the property affected by this proceeding, of any part thereof." It shall not be an exception to such conclusiveness that any such person is an infant, lunatic or is under any other disability or is not yet in being. (Amended by L. 1910, ch. 627; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 23.

§ 392. Fraud; action to set aside the final order or judgment or to recover the property.

Any title registration procured by or as the result of fraud may be set aside, in the same manner and by the same proceedings as in case of a deed obtained by fraud, provided that such proceedings for setting aside the registration shall not injuriously affect the rights of an innocent purchaser or incumbrancer of the property after such registration, for value and without actual notice of the fraud, and provided further that the action or other proceeding to set aside such registration be commenced within ten years from the time when the final order or judgment of registration was entered. No action or proceeding shall lie or be commenced, except on the ground of fraud as above stated, to set aside any final order or judgment of registration or to modify or affect the

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same or for the recovery of registered property or any estate, right or interest in or lien upon the same or any part thereof, or to make any entry thereon, adversely to the title or interest registered therein, as directed by a final order or judgment of the court, unless such action or proceeding is commenced within thirty days after such final order or judgment of registration is entered. (Amended L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 24.

§ 393. Registration of title.

Upon entering the final order, an enrollment thereof as a judgment roll in an action must be prepared and filed in the office of the clerk, consisting of the petition, the notice with proof of service, the examiner's report, all orders and all other papers necessarily affecting the final order of registration. The clerk upon payment of a fee of one dollar shall cause a copy of said judgment to be certified and transferred to the registrar of his county, who shall forthwith file the same in his office. After the certified copy of the final order or judgment directing registration of title is duly filed in the registrar's office, the registrar shall proceed to register the title to the real property, estate, right or interest, pursuant therto, and issue a certificate or certificates thereof and enter the same as herein prescribed. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 25.

§ 394. Certificate of title.

The registrar shall make, in the form prescribed by section four hundred and thirty-five of this chapter, an original certificate of title of every title, right or interest registered by him pursuant to this article. Said certificate shall bear the date of its issue (the day and year), and be under the hand and official seal of the registrar, and be numbered in the order of its issue. Except in case of a corporation, it shall state whether the owner of the property, right, or interest registered is married or unmarried, and if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if he is under any other disability, it shall state the nature of such disability. The registrar shall make proper memorials or notations on the certificate, showing in such manner as to set forth and preserve their priorities, the particulars of all the

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estates, mortgages, trusts, liens and charges, to which such owner's title is subject. No such memorial or notation shall be more than one folio (one hundred words), in length; but it may refer to covenants, restrictions, trusts and forms recorded in the "book of covenants, restrictions, trusts and forms" provided for by this article. The form of the first certificate of title, as set forth in section four hundred and thirty-five of this article, shall be subject to such changes as may be required in any case. All subsequent certificates shall be in like form, except that in place of the words "first certificate," et cetera, shall be the words "transfer from number ....." (the number of the next previous certificate); also the words "first registered ....." (date of first registration). On the back or reverse side of every certificate shall be printed, in plain legible type, the whole of section four hundred of this chapter. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 26.

§ 395. Title book.

The registrar shall keep a book or books to be known respectively as the "title book," wherein he shall enter all first and subsequent "original" certificates of title by binding or recording them therein, with appropriate blanks for the entry of memorials and notations prescribed by this article. Said book shall be of about the size of the conveyance libers, now used in county clerks' and registers' offices. Each certificate shall constitute a separate leaf of such book. About two inches of each leaf on the binding edge shall be kept blank on both sides, to facilitate rebinding. At such times as may be proper, the registrar may rebind the certificates in new volumes or title books, containing respectively cancelled and uncancelled certificates. All memorials and notations, that may be entered in the title book under the terms of this article, shall be entered upon the leaf constituting the last certificate of title of the property to which they relate. Whenever the term "certificate of title" is used in this article it shall be deemed as including all memorials or notations thereupon noted. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 27.

§ 396. Duplicate certificate of title.

The registrar shall, at the same time that he makes out his

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original certificate of title, make out an exact duplicate thereof, with the memorials and notations thereon noted, which shall be delivered to the owner and shall be known as the owner's duplicate. Any duplicate certificate, or certified copy of a certificate, shall be plainly stamped as such across its face.

Derivation: L. 1908, ch. 444, § 28.

§ 397. Owner's receipt for certificate of title.

For the purpose of preserving evidence of the handwriting of the owner of any registered property, right, or interest, it shall be the duty of the registrar to take from such owner, in every case where it is practicable so to do, his receipt for the certificate of title or whatever paper shall be issued to him, signed by such owner in person. When such receipt is signed in the registrar's office it may be witnessed by the registrar or some deputy. If signed elsewhere, it may be acknowledged before any officer authorized to take acknowledgement of deeds. When so signed and witnessed or acknowledged, such receipt shall be prima facie evidence of the genuineness of such signature.

Derivation: L. 1908, ch. 444, § 29.

§ 398. Certificate to include dealings pending registration.

In every case of initial registration, the certificate of title shall include all dealings with the real property, and all statutory or other liens filed against the same, subsequent to the filing of the application, except when they are modified or set aside by a judgment, decree or order of the court. On and after the filing with the registrar of the notice of application for the registration of any real property, and until the same is registered, or the application is denied, dismissed, or discontinued, all papers which are required or permitted by this article to be filed against registered property, except the papers in the action, shall be filed with the registrar as if the property were registered. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

Derivation: L. 1908, ch. 444, § 30.

§ 399. Certificate of title as evidence.

The certificate of title, and any copy thereof duly certified under the hand and seal of the registrar and the owner's duplicate certificate, until the expiration of the time herein limited to bring an action or proceeding to set aside the final order or judgment of registration shall be received as evidence in all the courts of the

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state, and in all courts and places shall be prima facie evidence that the provisions of law up to the time of issue of such certificate or duplicate, or of the time of entry of the last memorial thereon, have been complied with, and that such certificate of title has been issued in compliance with a valid final order or judgment, and that the title to the property is as therein stated; and after the expiration of such time limited for bringing said proceedings to set aside said final order or judgment, such certificate or copy, up to the time of its issue, shall be so received as evidence in all courts of the state, and shall be conclusive evidence of the same facts. Every memorial or notation or cancellation thereof made on any certificate or duplicate or copy thereof shall be signed by the registrar or his deputy or his duly authorized deputy or clerk. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 31.

§ 400. Rights of owners of registered property; exceptions; incumbrances and transfers to be filed.

A person who receives a certificate of title pursuant to a judgment of registration, except in case of fraud to which he is a party, and a purchaser of registered real property, who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances, charges, trusts, liens and transfers, except those noted on the certificate in the registrar's office, and any of the following which may exist:

First. Liens, claims, or rights arising or existing under the laws or constitution of the United States, which the statutes of this state do not require to appear of record;

Second. Any tax, water rate, or assessment which becomes a lien on the property after initial registration and for which a sale has not been made;

Third. Any lease or agreement for a lease, made after or pending registration, for a period not exceeding one year, where there is actual occupation of the land under the lease or agreement;

Fourth. Easements or servitudes which accrue against the property after initial registration in such manner as not to require their registration.

Except as specified in the foregoing statement of exceptions, no incumbrance, charge, trust, lien, or transfer shall take effect upon

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or over real property the title to which has been registered, unless the instrument creating and setting forth such incumbrance, charge, trust, lien, or transfer has been filed with the registrar and a memorial or notation thereof made upon the certificate of title covering the property. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 32.

§ 401. Registered property not affected by prescription or adverse possession.

No title to registered real property, in derogation of that of the registered owner, shall be acquired by prescription or adverse possession.

Derivation: L. 1908, ch. 444, § 33.

§ 402. Fraud; notice only by registration.

Except in case of fraud and except also as herein otherwise provided, no person taking a transfer of any registered real property or of any estate or interest therein or lien or charge thereon from the registered owner shall be required to inquire into the circumstances under which, or the consideration for which such owner or any previously registered owner had the title registered, nor shall such transferee be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand or interest whatever; and the knowledge that an unregistered trust, lien, claim, demand or interest is in existence shall not of itself be imputed or treated as fraud.

Derivation: L. 1908, ch. 444, § 34.

§ 403. Memorial to be carried forward.

Whenever a memorial or notation has been entered as permitted by this article, the registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this article.

Derivation: L. 1908, ch. 444, § 35.

§ 404. Registered property to remain registered.

The bringing of property under this article shall imply an agreement, running with the land and binding upon the applicant and all his successors in interest or title, that the property shall be subject to the terms of this article, and all amendments and alterations thereof, and all dealings with the property so registered, or any estate, right or interest therein, after the same has been

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brought under this article, and all liens, incumbrances and charges upon the same after the first registration thereof shall be subject to the terms of this article. (Former § 404 repealed and new § 404 inserted by L. 1910, ch. 627; amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 36.

§ 405. Registered property subject to same rights and burdens as unregistered property.

Registered real property and every estate, right and interest therein shall be in all respects subject to the same rights, burdens and incidents as unregistered real property, except as otherwise expressly provided in this article or any amendment thereof.

Derivation: L. 1908, ch. 444, § 37.

§ 406. Transfers of registered property.

A registered owner of real property, in order to transfer his whole estate or interest therein or any part of parcel thereof, or any undivided interest therein shall execute to the intended transferee a deed or instrument of conveyance in any form authorized by law. Upon filing such deed or other instrument in the registrar's office and surrendering to the registrar the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the transfer the registrar shall enter such statement as a memorial upon the proper original certificate, provided that such statement is not more than one folio (one hundred words) in length. He shall then make out and register as herein provided a new certificate and also an owner's duplicate certifying the title to the estate or interest in the property conveyed to the transferee and shall enter upon the original and duplicate certificate the date of the transfer, the name of the transferee and the number of the new certificate, and shall stamp across the original and surrenderd duplicate certificates the word "cancelled." If the parties in interest fail to agree upon the statement to be entered upon the certificates, the registrar shall refuse to make the transfer until directed by the court as herein provided. Title to such property shall not pass by such transfer until the transfer is registered as prescribed by this section. Any instrument of transfer or mortgage of an estate in fee simple in registered property shall contain an express statement, after the de-

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scription of the grantor or grantors, mortgagor or mortgagors, as to whether or not such party or parties are married or unmarried; and no instrument of transfer or mortgage which does not contain such statement shall be registered. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

Derivation: L. 1908, ch. 444, § 38.

§ 407. Certificate as to part of property remaining after transfer.

When only a part of the property described in a certificate is transferred, or some estate or interest therein is to remain the transferrer's, a new certificate shall be issued for such part, estate or interest so remaining and belonging to him; or if the property is so described as to permit it, the property transferred may be cancelled on the certificate of the transferrer without the issue of a new certificate for the residue. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 39.

§ 408. Book of covenants, restrictions, trusts and forms.

Each registrar shall provide a book to be known as the book of covenants, restrictions, trusts and forms. This book shall be bound in a substantial manner and the pages thereof shall be Crane's parchment paper or its equal. Any person may have recorded in this book any covenant, restriction, trust or form he may present for that purpose on payment to the registrar at the rate of fifty cents per folio. The covenant, restriction, trust and form so entered shall be numbered consecutively and shall be written or typewritten in the book with India ink or other permanent ink in a clear and legible manner under the number given to it. References in any documents issued by the registrar to any covenant, restriction, trust or form recorded in this manner shall be as follows:

Subject to restriction, (or covenant, trust or form) recorded under number.....in the book of covenants, restrictions, trusts and forms, in the registrar's office of this county. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 40.

§ 409. Filing, entering and indexing papers pursuant to this act; tickler certificate.

Every paper filed with the registrar shall be given a serial num-

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ber in the order of its filing, and then shall be entered by the registrar in an "entry book" under columns showing:

First. The serial number;

Second. Day of filing;

Third. Filing number of petition to which it relates if the registration proceedings are still pending;

Fourth. Certificate number, if registration proceedings are completed and certificate has been issued;

Fifth. Kind of paper filed;

Sixth. Name, place of residence with street number, if any, and post-office address of the person in whose interest the paper is filed.

Every paper filed with the registrar affecting property for which registration proceedings are pending shall in addition to its own serial number receive the petition number and be kept by the registrar with the petition. The registrar shall provide a book to be known as "the tickler certificate book" wherein he shall note all filed papers affecting property for which registration proceedings are pending. Each page shall constitute a separate tickler certificate, and on said certificate he shall enter the character of the paper, the date of filing and the filing number. The tickler certificate, subject to such change as the case may require, shall be substantially as follows:

Application number.....

This certifies that the following papers have been filed in the office of the registrar of ..... county affecting, or in connection with an action to register the title to the following described real property, to wit:

(The description to appear here.)

Character of paper.	When filed.	Filing number.

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A memorial of every paper filed with the registrar affecting title to registered property shall be entered at once upon the last original certificate to which it relates. Every paper filed with the registrar affecting the title to property shall be indexed from its contents as follows: In an index showing in alphabetical order in one column or in a set of columns the names, places of residence with street numbers, if any, and post-office addresses of all persons in whose interest petitions for registration of title are filed; the names, places of residences with street numbers, if any, and post-office addresses of all persons to whom any interest, right, or power in real property is granted or released; and the names, places of residence with street numbers, if any, and post-office addresses of all persons claiming an interest in real property; also, in separate columns the kinds of papers filed, the numbers of the filed papers, the dates of filing, the filing numbers of petition to which they relate (if petition is pending) and the numbers of the last original certificate to which they relate (if the title to the property is registered). Whenever a judgment or an order of court directs that the title to real property be registered, it shall also direct the registrar to transfer all proper liens and incumbrances filed against the property pending registration to the certificate of title so to be issued. In those counties which have block indexes, an index shall be kept by blocks of all registered property and the owners thereof with a reference to the certificate numbers in which the properties are registered; if any system of indexing by lot numbers is in use the index lot numbers shall be shown. In counties which have no block indexes the registrar shall also keep an index of all properties registered under this article, in which such registered properties shall be indexed according to a brief description thereof. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1920.)

Derivation: L. 1908, ch. 444, § 41.

§ 410. Notice of filed papers.

All papers filed by the registrar, and indexed and entered by him pursuant to this article, shall be of equal effect as to notice, in the order of their filing as shown by their filing numbers, as are similar papers when recorded by county clerks or registers under the recording acts. Should an action for registration be

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discontinued or otherwise terminated without registration, an order of court to that effect shall be filed with the registrar, who shall at once cause all the papers relating to the title to the property affected, filed with him, except the notice of application and said order, to be recorded or filed, and indexed, by the county clerk or register (as the case requires) in the order of their filing, on payment of the statutory fees. (Amended by L. 1910, ch. 627, in effect June 23, 1910.)

Derivation: L. 1908, ch. 444, § 42.

§ 411. Addresses of interested parties; notice.

On every paper or instrument filed with the registrar there shall be indorsed the name, place of residence with street number, if any, and post-office address of the person in whose behalf it is filed. The address may be changed from time to time, by such person filing with the registrar a written notice of such change. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 43.

§ 412. When a transfer is deemed to be registered.

Every transfer of registered property shall be deemed to be registered under this article when the new certificate to the transferee shall have been entered as in the case of first registration; and all other dealings shall be considered as registered when the memorial or notation shall have been entered in the title book upon the last certificate of title to the property. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 44.

§ 413. New certificates of title.

Upon the application of any owner of registered property held under one or more certificates of title and delivering up of such certificate or certificates, the registrar shall issue to such owner, at his option, separate certificates, each for a portion of such property in accordance with such application; and upon issuing any such certificate of title, said registrar shall indorse on the last previous certificate of such property so delivered up a memorial setting forth the occasion of the cancellation thereof and referring to the number or numbers of the new certificates of title so issued. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 45.

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§ 414. Loss of owner's duplicate.

If any duplicate certificate is lost or destroyed or cannot be produced, a duly verified statement, setting forth the facts relating thereto, may be filed with the registrar by the registered owner, or other person in interest. Upon such application, after due notice and hearing, the court may direct the registrar to issue a new duplicate certificate, containing a memorandum of the fact that it is issued in place of a lost duplicate certificate, which shall be entitled to like faith and credit as the original duplicate.

Derivation: L. 1908, ch. 444, § 46.

§ 415. Mortgages, leases and other liens and charges; may be registered.

Any mortgage, lease for a term of over one year, contract to sell or other instrument intended to create a lien, incumbrance, trust or charge on registered property or any right or interest therein, may be registered as herein provided.

Derivation: L. 1908, ch. 444, § 47.

§ 416. Proceedings to register mortgage, lease or other lien or charge.

On the filing of the instrument in the registrar's office and the production of the duplicate certificate of title, if the interested parties agree in a statement as to the nature and effect of the mortgage, lease or other lien or charge, the register shall enter such statement upon the proper certificate in the title book, provided such statement be not more than one folio (one hundred words) in length, and also he shall enter upon the owner's certificate a memorial thereof and the date of filing the instrument with a reference to its file number, which memorial shall be signed by the registrar who shall deliver to the person filing such instrument a certified copy of such instrument certified to be the "registration copy." The registrar shall also note upon the instrument filed the number of the certificate on which the memorial is entered. If the parties in interest fail to agree upon the memorial so to be made by the registrar, he shall refuse to make any memorial thereof until directed by the court to do so, as herein provided. Any mortgage registered pursuant to this section shall be subject to the provisions of article eleven of the tax law (being chapter sixty-two of the laws of nineteen hundred and nine), and amendments thereof in the same manner as if said mortgage were recorded, as provided by section two hundred and fifty-three of

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said tax law. (Amended by L. 1910, ch. 627; L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 48.

§ 417. Judgments, decrees, attachments and other liens to be noted on certificate.

No judgment, decree, attachment, execution, mechanic's lien, or other lien or charge, which may affect or be a lien or charge upon real property in this state, shall be or become a lien or charge on real property, or any right or interest therein, the title to which has been registered, unless a transcript, or certified copy, or other duly made or certified document, which is by law proper evidence in a court of record, of such judgment, decree, attachment, mechanic's lien, or other lien or charge, shall be duly filed with the registrar, and a proper memorial thereof made by him upon the certificate of title in the title book. Such transcript, or certified copy, or other duly made or certified document so filed shall have plainly written or stamped thereon the number of the certificate of registration to the title to the property to be affected and bound thereby by virtue of such memorial on such certificate, and it shall be the duty of the registrar to make such memorial immediately on receipt of the same. A discharge, cancellation, or modification of any judgment, decree, attachment, mechanic's lien, or other lien or charge, so noted on the certificate, shall not affect or be binding upon the registered property, right, or interest, unless on like evidence a memorial thereof shall be made by the registrar on such certificate. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 49.

§ 418. Assignment of mortgage, lease, or other lien or charge.

The holder of any mortgage, lease, or other lien or charge on registered property, in order to transfer the same or any part thereof, shall execute an assignment of the whole or any part thereof; and upon such assignment being filed in the office of the registrar, and the production of the registration copy of the instrument, if any, which created the mortgage, lease or other lien or charge and which is held by the assignor, the registrar shall enter in the title book a memorial of such transfer with a reference to the assignment by its file number; he shall also note upon the instrument

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on file in his office intended to be transferred, and upon the registration copy thereof produced, the number of the certificate on which the memorial is entered, with the date of the entry. In case of the loss or destruction of the registration copy provided for herein, a new duplicate registration copy may be issued in the manner provided for in section four hundred and fourteen of this chapter for the issuance of a new duplicate certificate. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 50.

§ 419. Release, discharge or surrender of charge or incumbrance.

A release, discharge or surrender of a charge or incumbrance, or any part thereof, or of any part of the property charged or incumbered, may be effected in the same way as is above provided in the case of a transfer. In case only a part of the charge or only a part of the property charged is to be released, discharged or surrendered, the entry shall be made accordingly, but when the whole is released, discharged or surrendered, the registrar shall plainly stamp across the instrument on file, and on the memorial thereof, and on the registration copy produced, the word "cancelled," and shall sign the same. Any tax, water rent or assessment, subject to which the title has been registered and which has been noted on the certificate of title as provided in section three hundred and ninety of this chapter, may be released and discharged in the same way upon a receipt therefor being issued and duly certified by the receiver of taxes or collector of assessments and arrears or other duly authorized officer, as the case may require, and delivered to the registrar and filed in his office. The receiver of taxes or collector of assessments and arrears or such other duly authorized officer, as the case may require, upon demand of any owner of registered property, shall execute, certify and deliver to such owner such receipt when any such tax, water rent or assessment has been paid upon such registered property. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 51.

§ 420. Enforcement of mortgages, charges, liens and incumbrances.

All charges, liens and incumbrances on registered property, or on any estate, right or interest in the same, and all rights therein may be enforced as now allowed by law; and all laws with

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reference to the foreclosure, release or satisfaction of mortgages shall apply to mortgages on registered property or on any estate, right or interest therein, except as herein otherwise provided, and except that until notice of the pendency of any suit to enforce such mortgage, charge, lien or incumbrance is filed in the registrar's office and a memorial thereof entered on the certificate in the title book, the pendency of such suit shall not be notice to the registrar or to any person dealing with the property or any right or interest therein. Upon the sale under foreclosure or other action or proceeding directing the sale of real property, the title to which is then a registered title, it shall be the duty of the officer making the sale to report such sale to the justice assigned to the "title part" of the special term, who shall thereupon designate an official examiner of title to examine into the action or proceeding or any other fact or circumstance affecting the title since the last registration thereof. The examiner of title shall prepare his report immediately and shall file one copy with the court designating him and one copy with the officer making the sale. The officer making the sale shall not deliver a deed of the property sold until the examiner's report is filed with him showing the regularity of the acts and proceedings subsequent to the last registration of title. The justice of the "title part" shall upon the production of the deed from the officer making the sale and upon the report of the examiner approve said deed and make an order directing the registrar to register the title accordingly. The fees for the services of the official examiner under this section shall not exceed the sum of five dollars unless an additional allowance is directed by the justice of the "title part." (Amended by L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 52.

§ 420-a. Registration under judicial sales.

(Added by L. 1916, ch. 547; repealed by L. 1918, ch. 572, in effect May 8, 1918.)

§ 421. Powers of attorney to be filed and registered.

Before any person can convey, charge, incumber or otherwise deal with any registered property, or any estate, right or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar and a

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memorial thereof shall be entered upon the certificate in the title book, in like manner as in the case of a charge or incumbrance. A revocation of such power of attorney may be registered in like manner as such power of attorney was registered. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 53.

§ 422. Reference of doubtful matters to the court.

When the registrar is in doubt, and the parties in interest fail to agree as to the proper memorial to be made in the title book of any deed, mortgage or other voluntary instrument presented for registration, the questions shall be referred to the court for decision, either on the certificate of the registrar stating the question, or upon the suggestion in writing of any party or parties in interest; and the court, after due notice to all parties in interest, and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly. In any judicial proceeding affecting property, the title to which is then a registered title, the court upon the application in writing of any party or parties in interest after due notice to all other parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of any memorial that should be made by the registrar in the title book because or as the result of such proceeding; and the registrar, upon the production of a certified copy of such order, shall make the proper memorial in accordance with such order. After making such memorial in the title book the registrar shall also make all other memorials on existing certificates or make and deliver any new certificates according to the circumstances and in the manner required herein. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 54.

§ 423. Death of owner of registered property; transfer of property.

Upon the death of an owner of registered real property or any estate, right, or interest therein, his heirs-at-law or devisees, at any time after the due entry of a decree of the surrogate's court, probating his will and granting letters testamentary thereon or granting letters of administration, or in case of an appeal from such decree at any time after the entry of a final decree, may make

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petition to the court for an order directing the registrar in whose name or names and in what manner the title shall be registered and new certificate or certificates issued thereon. Two or more heirs or devisees may unite in one such petition. On such petition the court, after due notice to all parties in interest and a hearing, if necessary or proper, may enter an order prescribing the name or names and manner in which the title shall be registered. On such petition the certificate of title of the deceased owner, or a duplicate copy thereof, shall be sufficient and conclusive evidence of his title at the time of his death, and no other evidence of the title up to that time may be produced.

Upon the coming to age, or freedom from disability of a person whose guardian or committee is a registered owner as above described, or upon a transfer of the powers and duties of an executor, trustee or other person acting in a representative capacity, or upon any other transfer of registered ownership or nominal change of ownership by death or process of law or otherwise in a case not otherwise provided for by this article, a petition may be made to the court for an order directing the registrar as to the persons in whose name or names and in what manner the title shall be registered and a new certificate issued; and the court, on such petition and on due notice to the persons who in the opinion of the court shall be parties in interest and after a hearing, if deemed necessary or proper, shall enter an order prescribing the name or names and the manner in which the title shall be registered. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 55.

§ 424. Certificate of title during settlement of estate.

Any new certificate of title, made and entered as prescribed in the preceding section before the final settlement in the surrogate's court of the personal estate of the deceased owner of the real property, shall state expressly that it is made and entered because of transfer of the title from the last certificate by descent or devise, and that such personal estate is in process of settlement. After the final settlement of such personal estate in the surrogate's court, or after the expiration of the time allowed by the code of civil procedure for bringing a proceeding for selling, mortgaging or leasing the real property of the deceased owner for the payment of his

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debts, the heirs-at-law or devisees may apply to the court in the registration proceeding for an order directing the cancellation of said memorial upon the certificate, which memorial showed that the personal estate was in the course of settlement, and the court, after being satisfied by due proof that said personal estate is completely settled or that said time to apply for selling, mortgaging or leasing the said real property has expired, shall make an order directing the cancellation of said memorial; but the liability of heirs or devisees of registered property, or of such property itself, for claims against the deceased or his estate shall not be in any way diminished or changed by this article. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 56.

§ 425. Title derived through execution of a power in a will.

When the will of a deceased registered owner of real property, or of any estate, right or interest therein, empowers the executor or executors to sell, incumber or otherwise deal with such property, estate, right or interest, it shall not be necessary for such executor or executors to be registered as the owner or owners thereof; but any person who acquires title through or by virtue of the execution of such power may have such title registered, by proceeding in the same manner as heirs or devisees of a deceased registered owner of real property, as directed and provided by this article.

Derivation: L. 1908, ch. 444, § 57.

§ 426. Assurance fund.

Upon the original registration of real property, there shall be paid to the registrar one-tenth of one per centum of the value thereof on the basis of the last assessment for local taxation. All moneys received by the registrar under the provisions of this section shall be paid to the treasurer of the county (in New York city to the city chamberlain), as an assurance fund for land registered in his county and shall be treated in the same manner as are other funds received for local taxation or for the reduction of the county or city debt. Said treasurer (or city chamberlain) shall keep a separate account of such funds and report annually thereon as required by law in reference to other funds in his hands. (Amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 58.

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§ 427. Compensation from assurance fund.

Any person who, without negligence on his part, sustains loss or damage or is deprived of real property, or of any estate, right or interest therein because of the registration of another person as owner of such property, or of any estate, right, or interest therein, through fraud, or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorial in the title book, shall have a cause of action against the county treasurer (in New York city the city chamberlain) to recover compensation for such loss or damage. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 59.

§ 428. Action against assurance fund.

Any allowed claim for indemnity shall be paid in the same manner as other claims against the county. In the city of New York a claim shall be passed upon and approved by the registrar and by the corporation counsel of the city before payment is allowed. The rejection of a claim by the proper county officials (or in the city of New York by the registrar and corporation counsel) shall not preclude the claimant from bringing an action to recover such claim. No claim or judgment on a claim for indemnity shall be binding on the county or on the county treasurer (in New York city the city chamberlain) for an amount exceeding the amount credited to the assurance fund. If the amount credited to the assurance fund is insufficient to pay the claim or judgment in full, the unpaid balance shall bear interest at the legal rate and shall be paid out of the first moneys coming into said assurance fund. If any right of action against any person for damages for negligence or other cause, or under any covenant or contract of warranty or guaranty or otherwise, exists in favor of the person to whom indemnity is paid, the county treasurer (in New York city the city chamberlain) shall be deemed to be subrogated to such right and may bring an action to recover thereunder. Any amounts recovered by the county treasurer (in New York city the city chamberlain) under such an action shall be credited to the account of the assurance fund. Until the assurance fund provided as aforesaid shall have been exhausted, payment for any such losses or damages shall be made out of such fund. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 60.

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§ 429. Restrictions on claims against assurance fund.

No person shall recover from the assurance fund any greater sum than the fair market value of the property at the time the right to bring such action first accrued. Any action or proceeding to recover damages out of the assurance fund shall be commenced within six years from the time when the right to begin the same accrued, and not afterward, and such time shall not be extended because of any disability. (Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, § 61.

§ 430. Penalties for fraudulent acts or false certificates.

Whoever fraudulently procures or assists in fraudulently procuring, or is intentionally privy to the fraudulent procurement of any certificate of title or other instrument, or of any entry in the registration or other book kept in the registrar's office, or of any erasure or alteration in any entry in said book, or in any instrument authorized by this act, or knowingly defrauds, or is intentionally privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement or affidavit, affecting registered land, shall be guilty of a felony and shall be punished by a fine of not exceeding five thousand dollars, or imprisonment for a period not exceeding five years, or both, in the discretion of the court.

Derivation. L. 1908, ch. 444, § 62.

§ 431. Forgery and fraudulent stamping; penalty.

Whoever forges, or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, handwriting of any officer of the registrar's office; or fraudulently stamps or procures to be stamped, or assists in stamping, any document with any forged seal of said registrar, or forges or procures to be forged, or assists in forging, the name, signature or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person, or uses any document upon which any impression or part of the impression of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged, or swears falsely concerning any matter or proceeding made or done in pursuance of this article, shall

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be guilty of a felony, and shall be punished by imprisonment in the pentitentiary for a period not exceeding five years, or by a fine not exceeding five thousand dollars, or both, in the discretion of the court.

Derivation: L. 1908, ch. 444, § 63.

§ 432. Fees to be charged.

The following fees shall be charged by registrars for the various services performed pursuant to this article:

(a) Filing the notice of petition, including entering it in the entry book, indexing it, and entering it in the tickler certificate book, one dollar.

(b) Filing and indexing the final order or judgment and issuing certificates of title in accordance therewith, and indexing same, five dollars.

(c) Entering, filing and indexing any lien, incumbrance or charge pending registration or subsequent thereto, one dollar.

(d) Entering, filing and indexing a deed or other paper requiring the cancellation of one certificate and the issue of another—for each new certificate issued, three dollars.

(e) Entering, filing and indexing any instrument cancelling any lien or incumbrance on a certificate, fifty cents.

(f) Making any additional certificate, fifty cents.

(g) Entering, filing and indexing a caution, one dollar.

(h) Services of the official examiner of title, one-tenth of one per centum of the value of the property on the basis of the last assessment for local taxation, and ten dollars in addition thereto.

(i) Making, certifying and delivering a "registration copy" of any instrument, as provided by section four hundred and sixteen hereof, a fee computed at the same rates as the fees allowed by law for certifying a copy of a deed.

(j) Furnishing printed forms or for any services for which fees are not herein specified such reasonable charge as may be fixed by the registrar subject to the revision of the court. (Amended by L. 1910, ch. 627; L. 1916, ch. 547; **L. 1918, ch.** 572, in effect May 8, 1918.)

Derivation: L. 1908, ch. 444, § 64.

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§ 433. Construction of article.

This article shall be construed liberally, so far as may be necessary for the purpose of effecting its general intent.

Derivation: L. 1908, ch. 444, § 65.

§ 434. Form for official examiner's report of title.

The examiner's report of title shall be in appropriate form to set forth the matters required by this article. The registrar of any county is authorized to have forms prepared and printed for the examiner's report of title and for any other papers required by this article and shall furnish the same to applicants without charge or for such reasonable charge as may be fixed by the registrar. Such forms and the charge to be made therefor shall be subject to the revision of the court.

(Former § 434 repealed and new § 434 inserted by L. 1910, ch. 627; amended by L. 1916, ch. 547; L. 1918, ch. 572, in effect May 8, 1918.)

§ 435. Form for certificate of title.

The registrar's certificate title shall be in the following form:

No. ..... First registered .....

CERTIFICATE OF TITLE

(First Certificate) or (Transfer from No. .....) .....

.....

State of New York, } ss.:
County .....,

.....

of (residence, and if a minor give his age; if under other disability, state the nature of the disability); married to (name of husband or wife, or if not married, say not married); is the owner of an estate in fee simple (or as the case may be) in the following land (here describe the premises) subject to the estates, easements, incumbrances and charges hereunder noted. (In case of trust, condition or limitation, say "in trust" or "upon condition" or "with the limitation," as the case may be.)

Witness my hand and official seal this (date).

(Seal) .....,
Registrar.

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MEMORIALS

of estates, easements and charges on the land described in the above certificate of title.

Document number.	Kind.	Running in favor of	Terms.	Date of Registration.	Signature of Registrar.

(Amended by L. 1916, ch. 547, in effect May 15, 1916.)

Derivation: L. 1908, ch. 444, Schedule "B."

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ARTICLE 13.

CEMETERY LANDS.

SECTION 450. Lands used for cemetery purposes not to be sold or mortgaged.
451. Acquisition of lands for cemetery purposes in certain counties.

§ 450. Lands used for cemetery purposes not to be sold or mortgaged.

No land actually used and occupied for cemetery purposes shall be sold under execution or for any tax or assessment, nor shall such tax or assessment be levied, collected or imposed, nor shall it be lawful to mortgage such land, or to apply it in payment of debts, so long as it shall continue to be used for such cemetery purposes, except cemetery lands in which interments have not been made may be sold under execution to satisfy a valid judgment of a court of record. Whenever any such land shall cease to be used for cemetery purposes, any judgment, tax or assessment which, but for the provisions of this section would have been levied, collected or imposed, shall thereupon forthwith, together with interest thereon, become and be a lien and charge upon such land, and collectible out of the same. The provisions of this section shall not apply to any lands held by the city of Rochester. (Amended by L. 1918, ch. 404, in effect April 30, 1918.)

Derivation: L. 1879, ch. 310, §§ 1, 2, 3.

§ 451. Acquisition of lands for cemetery purposes in certain counties.

It shall not be lawful for any person to take by deed, devise or otherwise or set apart or use any land or ground in any of the counties of Westchester, Kings, Queens, Richmond, Rockland, Suffolk or Nassau for cemetery purposes without the consent of the board of supervisors for such county, or of the board of aldermen of the city of New York, as the case may be, first had and obtained in like manner as provided for in the membership corporations law; and said board of supervisors or board of aldermen in granting such consent may annex thereto such conditions, regulations and restrictions as such board may deem the public health or the public good require. (Added by L. 1909, ch. 274. Amended by L. 1912, ch. 300, in effect Apr. 13, 1912.)

* So in original.

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ARTICLE 14.

(Article added by L. 1920, ch. 930, in effect April 15, 1921.)

ACTION FOR DOWER.

SECTION 460. Limitation for action for dower.
461. Necessary defendants.
462. Who may be joined as defendants.
463. Actions; where defendants claim in severalty.
464. Damages to be recovered; how estimated.
465. Damages; in action against alienee of husband.
466. Damages; where several parcels are affected.
467. Damages apportioned between heir and alienee.
468. Action barred by assignment of dower.
469. Collusive recovery not to prejudice infant.
470. Complaint.
471. Interlocutory judgment for admeasurement.
472. Dower, how admeasured.
473. Report thereupon.
474. Setting aside report.
475. Fees and expenses.
476. Final judgment.
477. Plaintiff may recover sum awarded; court may modify judgment.
478. Junior incumbrancers; not affected by admeasurement.
479. Appeal not to stay execution, if undertaking is given.
480. Plaintiff may consent to receive a gross sum.
481. Defendant may consent to pay it; proceedings thereupon.
482. Interlocutory judgment for sale.
483. Direction that a part be laid off.
484. Liens to be ascertained.
485. Satisfaction or protection of lien.
486. Payment of taxes, assessments and water rates out of proceeds.
487. Report of sale.
488. Final judgment upon confirming sale.
489. Damages against grantee of premises subject to dower.
490. Certain provisions made applicable.
491. Action for ejectment by reversioner or remainderman after determination of particular estate.

§ 460. Limitation of action for dower.

An action for dower must be commenced by a widow, within twenty years after the death of her husband; but if she is, at the time of his death, either:

1. Within the age of twenty-one years; or
2. Insane; or
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence, for a term less than for life;

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The time of such a disability is not a part of the time limited by this section. And if at any time, before such claim of dower has become barred by the above lapse of twenty years, the owner or owners of the lands subject to such dower, being in possession, shall have recognized such claim of dower by any statement contained in a writing under seal, subscribed and acknowledged in the manner entitling a deed of real estate to be recorded, or if by any judgment or decree of a court of record within the same time and concerning the land in question, wherein such owner or owners were parties, such right of dower shall have been distinctly recognized as a subsisting claim against said lands, the time after the death of her husband, and previous to such acknowledgment in writing or such recognition by judgment or decree, is not a part of the time limited by this section. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1596.

§ 461. Necessary defendants.

Where the property, in which dower is claimed, is actually occupied, the occupant thereof must be made defendant in the action. Where it is not so occupied, the action must be brought against some person exercising acts of ownership thereupon, or claiming title thereto, or an interest therein, at the time of the commencement of the action. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1597.

§ 462. Who may be joined as defendants.

1. In either of the cases specified in the last section, any other person, claiming title to, or the right to the possession of, the real property in which dower is claimed, may be joined as defendant in the action.

2. The people of the state of New York may be made a party defendant in an action for dower where the people of the state of New York have an interest in or a lien upon the lands affected thereby, in the same manner as a private person. In such a case the summons must be served upon the attorney-general, who must appear in behalf of the people. But where the people of the state of New York are made a party defendant, as herein provided, the complaint shall set forth, in addition to the other matters required, detailed facts showing the particular nature of the interest in or the lien on the said real property of the people of the state of New York and the reason for making the people a party defendant. Upon failure to state such facts the complaint shall be dismissed

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as to the people of the state of New York. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1598.

§ 463. Actions where defendants claim in severalty.

In an action to recover dower, in a distinct parcel of real property of which the plaintiff's husband died seized, or in all the real property which he aliened by one conveyance, all the persons in possession of, or claiming title to, the property, or any part thereof, may be made defendants, although they possess or claim title to different portions thereof in severalty. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1599.

§ 464. Damages may be recovered; how estimated.

Where a widow recovers, in an action therefor, dower in property, of which her husband died seized, she may also recover, in the same action, damages for withholding her dower, to the amount of one-third of the annual value of the mesne profits of the property, with interest; to be computed, where the action is against the heir, from her husband's death, or, where it is against any other person, from the time when she demanded her dower of the defendant; and in each case, to the time of the trial, or application for judgment, as the case may be; but not exceeding six years in the whole. The damages shall not include any thing for the use of permanent improvements, made after the death of the husband. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1600.

§ 465. Damages in action against alienee of husband.

Where a widow recovers dower, in a case not specified in the last section, she may also recover, in the same action, damages for withholding her dower, to be computed from the commencement of the action; but they shall not include any thing for the use of permanent improvements, made since the property was aliened by her husband. In all other respects, the same must be computed as prescribed in the last section. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1601.

§ 466. Damages where several parcels are affected.

The last two sections do not authorize the recovery, against a defendant who is joined with others, of damages for withholding dower, in any portion of the property not occupied or claimed by him. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1602.

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§ 467. Damages apportioned between heir and alienee.

Where a widow recovers dower in real property aliened by the heir of her husband, she may recover, in a separate action against him, her damages for withholding her dower, from the time of the death of her husband to the time of the alienation, not exceeding six years in the whole. The sum recovered from him must be deducted from the sum, which she would otherwise be entitled to recover from the grantee; and any sum recovered as damages from the grantee, must be deducted from the sum, which she would otherwise be entitled to recover from the heir. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1603.

§ 468. Action barred by assignment of dower.

The acceptance, by a widow, of an assignment of dower, in satisfaction of her claim upon the property in question, bars an action for dower, and may be pleaded by any defendant. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1604.

§ 469. Collusive recovery not to prejudice infant.

Where a widow, not having a right to dower, recovers dower against an infant, by the default or collusion of his guardian, the infant shall not be prejudiced thereby; but when he comes of full age, he may bring an action of ejectment against the widow, to recover the property so wrongfully awarded for dower, with damages from the time when she entered into possession, although that is more than six years before the commencement of the action. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1605.

§ 470. Complaint.

The complaint, in an action for dower, must describe the property claimed with common certainty, by setting forth the name of the township or tract and the number of the lot, if there is any, or in some other appropriate manner, so that from the description, possession of the property claimed may be delivered where the plaintiff is entitled thereto, and must set forth the name of the plaintiff's husband. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, §§ 1511, 1606.

§ 471. Interlocutory judgment for admeasurement.

If the defendant makes default in appearing or pleading; or if the right of the plaintiff to dower is not disputed by the answer, or if it appears, by the verdict, report, or decision upon a trial,

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that the plaintiff is entitled to dower in the real property described in the complaint, an interlocutory judgment must be rendered; which, except as otherwise prescribed in this article, must direct that the plaintiff's dower in the property, particularly describing it, be admeasured by a referee, designated in the judgment, or by three reputable and disinterested freeholders, designated therein, as commissioners for that purpose. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1607.

§ 472. Dower, how admeasured.

The referee or the commissioners must execute their duties in the following manner:

1. They must, if it is practicable, and, in their opinion, for the best interests of all the parties concerned, admeasure and lay off, as speedily as possible, as the dower of the plaintiff, a distinct parcel, constituting the one-third part of the real property of which dower is to be admeasured, designating the part so laid off by posts, stones, or other permanent monuments.

2. In making the admeasurement, they must take into consideration any permanent improvements, made upon the real property, after the death of the plaintiff's husband, or after the alienation thereof by him; and, if practicable, those improvements must be awarded within the part not laid off to the plaintiff; or, if it is not practicable so to award them, a deduction must be made from the part laid off to the plaintiff, proportionate to the benefit which she will derive from so much of those improvements, as is included in the part laid off to her.

3. If it is not practicable, or if, in the opinion of the referee or commissioners, it is not for the best interests of all the parties concerned, to admeasure and lay off to the plaintiff a distinct parcel of the property, as prescribed in the foregoing subdivisions of this section, they must report that fact to the court.

4. They may employ a surveyor, with the necessary assistants, to aid in the admeasurement. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1609.

§ 473. Report thereupon.

All the commissioners must meet together in the performance of any of their duties; but the acts of a majority so met are valid. The referee, or the commissioners, or a majority of them, must make a full report of their proceedings, specifying therein the manner in which they have discharged their trust, with the items

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of their charges, and a particular description of the portion admeasured and laid off to the plaintiff; or, if they report that it is not practicable, or, in their opinion, it is not for the best interests of all the parties concerned, to admeasure and lay off a distinct parcel of the property, of which dower is to be admeasured, they must state the reasons for that opinion, and all the facts relating thereto. The report must be acknowledged or proved, and certified, in like manner as a deed to be recorded, and must be filed in the office of the clerk. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1610.

§ 474. Setting aside report.

Upon the application of any party to the action, and upon good cause shown, the court may set aside the report, and, if necessary, may appoint new commissioners, or a new referee, who must proceed, as prescribed in this article, with respect to those first appointed. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1611.

§ 475. Fees and expenses.

The fees and expenses of the commissioners, or of the referee, including the expense of a survey, when it is made, must be taxed under the direction of the court; and the amount thereof must be paid by the plaintiff, and allowed to her, upon the taxation of her costs. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1612.

§ 476. Final judgment.

Upon the report being confirmed by the court, final judgment must be rendered. If the referee or commissioners have admeasured and laid off to the plaintiff a distinct parcel of the property, the judgment must award to her, during her natural life, the possession of that parcel, describing it, subject to the payment of all taxes, assessments, and other charges, accruing thereupon after she takes possession. If the referee or the commissioners report, that it is not practicable, or that, in his or their opinion, it is not for the best interests of all the parties concerned, so to admeasure and lay off a distinct parcel of the property, the final judgment must direct, that a sum, fixed by the court, and specified therein, equal to one-third of the rental value of the real property, as ascertained by a reference or otherwise, be paid to the plaintiff, annually or oftener, as directed in the judgment, during her natural life, for her dower in the property; and that the sum so to be paid, be and remain a charge upon the property, during her natural life.

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The final judgment may also award damages for the withholding of dower. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1613.

§ 477. Plaintiff may recover sum awarded; court may modify judgment.
The plaintiff may, from time to time, maintain an action against the owner, or a person who was the owner of the property, to recover any instalment of the sum, so awarded to her for her dower, which became due during his ownership, and remains unpaid. Or, if an instalment remains due and unpaid, she may maintain an action to procure a sale of the property, and enforce the payment of the instalments, due and to become due, out of the proceeds of the sale. Such an action must be conducted, as if the charge upon the real property was a mortgage to the same effect. If, at any time, it is made to appear to the court, that the rental value of the real property has materially increased or diminished, the court may, by an order, to be made upon notice to all the persons interested, modify the final judgment, by increasing or diminishing the sum to be paid to the plaintiff. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1614.

§ 478. Junior incumbrances; not affected by admeasurement.
Where a portion of the property is admeasured and laid off to the plaintiff as her dower, a lien, which is inferior to the plaintiff's right of dower, attaches, during the life of the plaintiff, to the residue, or to the portion or share of the residue which was subject to it, as if the portion laid off to the plaintiff had not been a part of the property. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 1615.

§ 479. Appeal not to stay execution, if undertaking is given.
An appeal from a final judgment, awarding to the plaintiff possession of the part admeasured and laid off to her, does not stay the execution thereof, unless the court, or a judge thereof, grants an order directing such a stay. Such an order shall not be granted, if an undertaking is given on the part of the respondent, with one or more sureties, approved by the court, or a judge thereof, to the effect that, if the judgment appealed from is reversed or modified, and restitution is awarded, she will pay, to the person entitled thereto, the value of the use and occupation of the part so admeasured and laid off to her, or of the portion, restitution of which is awarded, during the time she holds possession thereof, by virtue

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of the judgment. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1616.

§ 480. Plaintiff may consent to receive a gross sum.

In an action for dower, the plaintiff may, at any time before an interlocutory judgment is rendered, by reason of the defendant's default in appearing or pleading, or, where an issue of fact is joined, at any time before the commencement of the trial, file with the clerk, a consent to accept a gross sum, in full satisfaction and discharge of her right of dower in the real property described in the complaint. Such a consent must be in writing, and acknowledged or proved, and certified, in like manner as a deed to be recorded. A copy thereof, with notice of the filing, must be served upon each adverse party who has appeared, or who appears after the filing. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, 1617.

§ 481. Defendant may consent to pay it; proceedings thereupon.

At any time after a consent is filed, as prescribed in the last section, and before an interlocutory judgment is rendered, any defendant may apply to the court, upon notice, for an order granting him leave to pay such a gross sum. Thereupon the court may, in its discretion, and upon such terms as justice requires, ascertain the value of the plaintiff's right of dower in the property, by a reference or otherwise, and make an order, directing payment, by the applicant, of the sum so ascertained, within a time fixed by the order, not exceeding sixty days after service of a copy thereof; and directing the execution by the plaintiff of a release of her right of dower, upon receipt of the money. Obedience to the order may be enforced, either by punishment for contempt, or by striking out the pleading of the offending party, and rendering judgment against him or her or in both modes. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1618.

§ 482. Interlocutory judgment for sale.

Where the plaintiff's consent has been filed, as prescribed in the last section but one, and she is entitled to an interlocutory judgment in the action, the court must, upon the application of either party, ascertain, by reference or otherwise, whether a distinct parcel of the property can be admeasured and laid off to the plaintiff, as tenant in dower, without material injury to the interests of the parties. If it appears to the court, that a distinct parcel cannot be so admeasured and laid off, the interlocutory judgment must, ex-

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cept in the case specified in the next section, direct that the property be sold by the sheriff, or by a referee designated therein; and that, upon the confirmation of the sale, each party to the action, and every person deriving title from, through, or under a party, after the filing of the judgment-roll, or of a notice of the pendency of the action, as prescribed by law be barred of and from any right, title, or interest in or to the property sold. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1619.

§ 483. Direction that a part be laid off.

In a case specified in section four hundred and eighty of this chapter where the property, or a part thereof, consists of one or more vacant or unimproved lots, the plaintiff's consent may contain a stipulation to take a distinct parcel, out of those lots, in lieu of a gross sum. In that case, the interlocutory judgment, instead of directing a sale, may direct if it appears to be just so to do, that commissioners be appointed to admeasure and lay off to the plaintiff a distinct parcel, out of the vacant or unimproved lots; and, if there is any other property, that it be sold, and a gross sum be paid to her out of the proceeds thereof, as prescribed in the next four sections. The plaintiff's title to each distinct parcel, admeasured and laid off to her, as prescribed in this section, is that of an estate of inheritance in fee simple. In admeasuring and laying off the same, the commissioners must consider quantity and quality relatively, according to the value of the plaintiff's right of dower in the vacant or unimproved lots, out of which the admeasurement is to be made; which must be ascertained, in proportion to the value of those lots, as prescribed, in the next four sections, for fixing a gross sum to be paid to her out of the proceeds of a sale. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1620.

§ 484. Lien to be ascertained.

Before an interlocutory judgment is rendered for the sale of the property, the court must direct a reference to ascertain whether any person, not a party, has a lien upon the property, or any part thereof. But the court may direct or dispense with such reference, in its discretion, where a party produces a search, certified by the clerk, or by the clerk and register as the case requires, of the county where the property is situated; and it appears therefrom, and by the affidavits, if any, produced therewith, that there is no such outstanding lien. Except as otherwise expressly prescribed in this article, the proceedings upon and subsequent to the reference must

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be the same, as prescribed by law, where a reference is made in an action for partition to ascertain whether there is a creditor not a party who has a lien on the share or interest of a party. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1621.

§ 485. Satisfaction or protection of lien.

Where the interlocutory judgment directs a sale, if the right of dower of the plaintiff is inferior to any other lien upon the property, the judgment may, in the discretion of the court, direct that the property be sold either subject to the lien, or discharged from the lien; and, in the latter case, that the officer making the sale pay the amount of the lien, out of the proceeds of the sale. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1622.

§ 486. Payment of taxes, assessments and water rates out of proceeds.

Where a judgment, rendered in an action for dower directs a sale of the real property, the officer making the sale must, out of the proceeds, unless the judgment otherwise directs, pay all taxes, assessments, and water rates, which are liens upon the property sold, and redeem the property sold from any sales for unpaid taxes, assessments, or water rates, which have not apparently become absolute. The sums necessary to make those payments and redemptions are deemed expenses of the sale. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1676.

§ 487. Report of sale.

Immediately after completing the sale, and executing the proper conveyance to the purchaser, the officer making the sale must make and file with the clerk a report thereof, showing the name of the purchaser, and the purchase-price paid by him, or, if the property was sold in parcels, the name of each purchaser, and the price and a description of the parcel sold to him; the sums which the officer has paid out of the proceeds of the sale, pursuant to the interlocutory judgment; the purpose for which each payment was made; the amount and items of his fees and expenses; and the net amount of the proceeds, after deducting the payments. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1623.

§ 488. Final judgment upon confirming sale.

Upon confirming the sale, the court must ascertain, by a reference or otherwise, the rights and interests of each of the parties in and to the proceeds of the sale, and also what gross sum of

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money is equal to the value of the plaintiff's dower in the net proceeds of the sale, calculated upon the principles applicable to life annuities. The court must thereupon render final judgment, confirming the sale, and directing that the gross sum so ascertained be paid to the plaintiff, in full satisfaction of her right of dower; and that the remainder of the proceeds of the sale be distributed among the persons entitled thereto. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1624.

§ 489. Damages against grantee of premises subject to dower.

If the defendant, in an action for dower, aliens the real property in question, after the filing of a notice of pendency of action and an execution against him for the plaintiff's damages is returned wholly or partly unsatisfied, an action may be maintained by the plaintiff against any person, who has been in possession of the property, under the defendant's conveyance, to recover the unsatisfied portion of the damages, for a time not exceeding that, during which he possessed the property. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1685.

§ 490. Certain provisions made applicable.

The provisions of law, relating to a sale in partition and to the distribution, investment, and care of the proceeds, apply, as far as they are applicable, to a sale made as prescribed in this article, and to the distribution of the proceeds of a sale, as prescribed in section four hundred and eighty-eight. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1625.

§ 491. Action for ejectment by reversioner or remainderman, after determination of particular estate.

Where a tenant for life, or for a term of years, suffers a judgment to be taken against him, by consent or by default, in an action for dower, the heir or person owning the reversion or remainder, may, after the determination of the particular estate, maintain an action of ejectment to recover the property. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1680.

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ARTICLE 15.

ACTION TO COMPEL THE DETERMINATION OF A CLAIM TO REAL PROPERTY.

(Article added by L. 1920, ch. 930, in effect April 15, 1921.)

SECTION 500. Who may maintain an action.
501. Complaint.
502. Proceedings when defendant denies plaintiff's title.
503. Proceedings when defendant pleads title.
504. Proceedings the same as in ejectment.
505. Proceedings when defendant claims in reversion or remainder.
506. Judgment awarding defendant possession.
507. Judgment for plaintiff.
508. Effect of judgment.
509. Action to determine widow's dower.
510. Proceedings, if plaintiff admits defendant's claim.
511. Proceedings when defendant's claim is denied.
512. This article applies to corporations.

§ 500. Who may maintain an action.

Where a person has been, or he and those whose estates he has, have been for one year in possession of real property, or of any undivided interest therein, claiming it in fee, or for life, or for a term of years not less than ten, he may maintain an action against any other person to compel the determination of any claim adverse to that of the plaintiff which the defendant makes, or which it appears from the public records, or from the allegations of the complaint, the defendant might make to any estate in that property in fee, or for life, or for a term of years not less than ten, in possession, reversion or remainder, or to any interest in that property, including any claim in the nature of an easement therein, whether appurtenant to any other estate or lands or not, and also including any lien or incumbrance upon said property, of the amount of value of not less than two hundred and fifty dollars. But this section does not apply to a claim for dower. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1638.

§ 501. Complaint.

The complaint in such an action must set forth facts showing:

1. The plaintiff's right to the real property; whether his estate therein is in fee, or for life, or for a term of years not less than ten; and whether he holds it as heir, devisee or purchaser, with

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the source from or means by which his title immediately accrued to him.

2. That the property, at the commencement of the action was, and, for the one year next preceding, has been in his possession, or in the possession of himself and those from whom he derives his title, either as sole tenant, or as joint tenant, or as tenant in common with others.

3. That the defendant unjustly claims, or that it appears from the public records or from the allegations of the complaint, that the defendant might unjustly claim an estate or interest or easement therein, or a lien or incumbrance thereupon of the character specified in the last section.

The complaint must describe the property claimed with common certainty, by setting forth the name of the township or tract and the number of the lot, if there is any, or in some other appropriate manner, so that from the description possession of the property claimed may be delivered where the plaintiff is entitled thereto, and may contain an allegation that no personal claim is made against any defendant other than a defendant who shall assert a claim adverse to the claim of the plaintiff set forth in the complaint. The demand for judgment may be to the effect that the defendant and every person claiming under him be barred from all claim to an estate in the property described in the complaint, or from all claim to an interest or easement therein, or a lien or incumbrance thereupon, of the character specified in the last section, or it may combine two or more of said demands with other demand for appropriate relief. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, §§ 1511, 1639.

§ 502. Proceedings when defendant denies plaintiff's title.

If the defendant, in his answer, puts in issue the matters specified in subdivision second of the last section, and succeeds upon that defense, final judgment must be rendered in his favor, dismissing the complaint, and awarding to him costs against the plaintiff. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1640.

§ 503. Proceedings when defendant pleads title.

The defendant may, in his answer, either with or without the defense specified in the last section, set forth facts, showing that he has an estate in the property or any part thereof, adverse to the plaintiff, in fee, or for life, or for a term of years not less than ten, in possession, reversion, or remainder, as in a complaint for the

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same cause of action; or the defendant may set forth facts showing that he has an interest or an easement in, or a lien or incumbrance upon, said property; and thereupon he may demand that the complaint be dismissed, or any judgment to which he would be entitled in an action brought by him to recover that estate in said propetry, or to enforce in any manner the interest or easement therein, or the lien or incumbrance thereupon which he asserts; or he may combine any two or more of said demands. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1641.

§ 504. Proceedings the same as in ejectment.

Where an issue of fact is joined in an action brought as prescribed in this article, unless the defendant merely demands that the complaint be dismissed, if the defendant claims an estate in said property, the subsequent proceedings, including the trial, judgment and execution, are the same as if it was an action of ejectment, except as otherwise expressly provided by law; if the defendant claims an interest or easement in, or a lien or incumbrance upon, said property, the subsequent proceedings are the same as if it was an action brought by the defendant to establish or enforce the said interest, easement, lien or incumbrance, and the court may award any appropriate relief except as otherwise expressly provided by law. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1642.

§ 505. Proceedings when defendant claims in reversion or remainder.

Where the defendant claims the property in question, or any part thereof, by virtue of an estate in remainder or reversion, he need not establish a right to the immediate possession thereof; but where the verdict, report, or decision finds that he has such an estate, it must specify the time when, or the contingency upon which, he will be entitled to possession; and final judgment to that effect must be rendered accordingly, without damages. In such a case, an execution for the delivery of the possession of the property may be issued upon the judgment; but only by the special order of the court, made upon an application by the defendant, or a person claiming under him, and satisfactory proof that the time has arrived when, or the contingency has happened upon which, the applicant is entitled to possession by the terms of the judgment. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1643.

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§ 506. Judgment awarding defendant possession.

Where a final judgment, in favor of the defendant, determines that he is entitled to the immediate possession of the property, it must award him possession accordingly. The final judgment must also award to him his damages for the withholding of the property, as in an action of ejectment. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1644.

§ 507. Judgment for plaintiff.

Final judgment for the plaintiff must be to the effect that the defendant, and every person claiming under him, by title accruing after the filing of the judgment-roll, or of the notice of the pendency of the action, as prescribed by law, be forever barred from all claim to any estate of inheritance, or for life, or for a term of years not less than ten, in the property; or such judgment must be that the defendant and every person claiming under him, as above stated, be forever barred from all claim to any interest or easement in, or lien or incumbrance upon, the said property, of any kind or nature whatsoever, or of any particular interest, easement, lien or incumbrance specified in said judgment; and the court may direct any instrument purporting to create any such interest, easement, lien or incumbrance to be delivered up or to be canceled of record; or two or more of said forms of judgment may be awarded in the same action. If such a judgment is taken upon the defendant's default in appearing or pleading, it shall not award costs to either party, unless it be taken upon a default in answering, after the decision of a demurrer to the complaint. A defendant against whom no personal claim is made in the complaint shall not be entitled to costs unless awarded by the court when such defendant asserts in his answer and establishes a claim in said lands adverse to the claim of the plaintiff in said action. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1645.

§ 508. Effect of judgment.

A final judgment in favor of either party, in an action brought as prescribed in this article, is conclusive against the other party, as to the title established in the action; and also against every person claiming from, through, or under that party, by title accruing after the filing of the judgment-roll, or of the notice of the pendency of the action, as prescribed by law. A new trial of said action after judgment shall not be granted as a matter of right, but the court may, in its discretion in the interest of justice, grant a new trial upon an application made by any party within one year

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after said judgment. But where a defendant is an infant, an idiot, a lunatic, an habitual drunkard, or imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term less than life, the said defendant shall have the right, within one year after his disability is terminated, to apply for and obtain a new trial of said action, and the representatives of such a defendant shall have the same right within one year after the death of said defendant, if such death occurs while the disability continues. Upon any new trial of an action, brought as prescribed in this article, the record of the evidence given upon the previous trial, may be again offered to the court by either party, and may be received in evidence, in case the same evidence cannot be again procured. The courts may make such rules and orders as to preserving the record of the evidence given in such actions and perpetuating the proofs produced therein, either with or without the awarding of any other relief to the party whose proofs are so perpetuated, as shall be necessary or proper, and may embrace such directions in the judgment. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1646.

§ 509. Action to determine widow's dower.

A person claiming, as owner, an estate in fee, for life, or for years, in real property, may maintain an action against a woman, who claims to have a right of dower in the whole or a part of the property, to compel the determination of her claim. But such an action cannot be commenced until after the expiration of four months after the death of defendant's husband. If the defendant is under any of the disabilities specified in the last section, the provisions of that section relating to new trials and to perpetuating proofs shall apply to her case. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1647.

§ 510. Proceedings, if plaintiff admits defendant's claim.

In an action brought as specified in the last section, if the complaint admits the defendant's right of dower in the property described therein, or any part thereof, it must demand judgment that her dower be admeasured. In that case, if the defendant does not, by her answer, set forth facts showing that she is entitled to a greater right of dower, or another estate or interest in the property, than is so admitted, and demand judgment therefor, as if she was the plaintiff in an action for dower, the court must render an interlocutory judgment, directing her dower to be admeasured, with

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or without damages for its detention, as in an action for dower. The subsequent proceedings are the same, as if the defendant had, as plaintiff, recovered an interlocutory judgment in an action for dower. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1648.

§ 511. Proceedings when defendant's claim is denied.

Where the plaintiff insists, in his complaint, that the defendant has not a right of dower in the property, he must demand judgment that she be forever barred from such a claim. In that case, or where the plaintiff admits a right of dower in the defendant, and the defendant in her answer demands judgment for a greater right of dower, or another estate or interest in the property, than is so admitted, the provisions of this article, relating to an action to compel the determination of an adverse claim in fee, or for life, or for a term of years not less than ten, apply to all proceedings subsequent to the answer. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1649.

§ 512. This article applies to corporations.

An action may be maintained, as prescribed in this article, by or against a corporation, or by or against an unincorporated association, as if it was a natural person, or such an action may be maintained by or against the receiver or other successor of any such corporation or association. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1650.

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ARTICLE 16.

(Article added by L. 1920, ch. 930, in effect April 15, 1921.)

ACTION FOR WASTE; OTHER ACTIONS.

SECTION 520. Who liable to action for waste.
521. Action for waste by heir, devisee, or grantor of reversion.
522. Action for waste by ward against guardian.
523. Action for waste by grantee of real property sold under execution.
524. Judgment in action for waste against tenant of particular estate.
525. Action for waste against joint tenant or tenant in common.
526. Interlocutory judgment for partition in action for waste.
527. Damages in action for waste to be deducted from defendant's share.
528. View in action for waste.
529. Action for nuisance.
530. Action against certain persons holding over as trespassers.
531. Action by reversioner or remainderman.
532. Action by joint tenant or tenant in common.
533. Action for cutting or carrying off trees or timber.
534. When treble damages may be recovered in such action.
535. Action for forcible entry or detainer; treble damages.
536. Actions relating to real property situate without the state.

§ 520. Who liable to action for waste.

An action for waste lies against a tenant by the curtesy, in dower, for life, or for years, or the assignee of such a tenant, who during his estate or term, commits waste upon the real property held by him, without a special and lawful written license so to do; or against such a tenant, who lets or grants his estate, and still retaining possession thereof, commits waste without a like license. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1651.

§ 521. Action for waste by heir, devisee, or grantor of reversion.

An heir or devisee may maintain an action for waste, committed in the time of his ancestor or testator, as well as in his own time. The grantor of a reversion may maintain an action for waste, committed before he aliened the same. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1652.

§ 522. Action for waste by ward against guardian.

Such an action may also be maintained against a guardian by

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his ward, either before or after the termination of the guardianship, for waste, committed upon the real property of the ward, during the guardianship. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1653.

§ 523. Action for waste by grantee of real property sold under execution.

Where real property is sold by virtue of an execution, the person, to whom a conveyance is executed pursuant to the sale, may manintain an action for waste, committed thereon after the sale, against the person, who was then in possession of the property. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1654.

§ 524. Judgment in action for waste against tenant of particular estate.

If the plaintiff recovers in an action for waste, other than an action brought as prescribed in the next section, the final judgment must award to him treble damages. Where the action is brought by the person next entitled to the reversion, and it appears, in like manner, that the injury to the estate in reversion is equal to the value of the tenant's estate or unexpired term, or that it was done maliciously, the final judgment must also award to the plaintiff the forfeiture of the defendant's estate, and the possession of the place wasted. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1655.

§ 525. Action for waste against joint tenant or tenant in common.

An action for waste may also be maintained, by a joint tenant or tenant in common, against his co-tenant, who commits waste upon the real property held in joint tenancy or in common. If the plaintiff recovers therein, he is entitled, at his election, either to a final judgment for treble damages, as specified in the last section, or to have partition of the property, as prescribed in the next two sections. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1656.

§ 526 Interlocutory judgment for partition in action for waste.

Where the plaintiff elects to have partition, as prescribed in the last section, if the pleadings, verdict, report, or decision, do not determine the rights and interests of the several parties in the property so held in joint tenancy or in common, the court must ascertain them, by a reference or otherwise. If it appears that there are persons, not parties to the action, who must have been made parties to an action for the partition of the property, they must be brought in by supplemental summons, and, if necessary,

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supplemental pleadings must be made. When the rights and interests of all the parties are ascertained, an interlocutory judgment for the partition or sale of the property must be rendered, and the subsequent proceedings thereon must be the same, as in an action for the partition of the property, except as otherwise prescribed in the next section. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1657.

§ 527. Damages in action for waste to be deducted from defendant's share.

The plaintiff may elect to take final judgment for the single damages awarded to him, or that, in making the partition, or in dividing the proceeds of a sale, so much of the share of the defendant in the real property, or the proceeds thereof, as will be sufficient to compensate the plaintiff for his single damages, and the costs of the action, other than the expenses of making the partition or sale, be laid off or paid, as the case may be, to the plaintiff. The residue of the property or proceeds, not laid off or distributed to the plaintiff or the defendant, must be laid off or paid to the persons entitled thereto, according to their respective rights and interests. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1658.

§ 528. View in action for waste.

In an action for waste, it is not necessary, either upon the execution of a writ of inquiry, or upon the trial of an issue of fact, that the jury, the judge, or the referee, should view the property. Where the trial is by a referee, or by the court without a jury, the referee or the judge may, in his discretion, view the property, and direct the attorneys for the parties to attend accordingly. In any other case, the court may, in its discretion, by order direct a view by the jury. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1659.

§ 529. Action for nuisance.

An action for a nuisance may be maintained in any case, where such an action might have been maintained under the laws in force, immediately before this section takes effect. A person by whom the nuisance has been erected, and a person to whom the real property has been transferred, may be joined as defendants in such an action. A final judgment in favor of the plaintiff, may award him damages, or direct the removal of the nuisance, or both. This section does not affect an action, wherein the complaint demands judgment for a sum of money only. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, §§ 1660-1663.

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§ 530. Action against certain persons holding over as trespassers.

A person in possession of real property, as guardian or trustee for an infant, or having an estate determinable upon one or more lives, who holds over and continues in possession, after the determination of his trust or particular estate, without the express consent of the person then immediately entitled, is a trespasser. An action may be maintained against him, or his executor or administrator, by the person so entitled, or his executor or administrator, to recover the full value of the profits, received during the wrongful occupation. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1664.

§ 531. Action by reversioner or remainderman.

A person, seized of an estate in remainder or reversion, may maintain an action founded upon an injury done to the inheritance, notwithstanding any intervening estate for life or for years. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1665.

§ 532. Action by joint tenant or tenant in common; may maintain action against co-tenant.

A joint tenant or a tenant in common of real property, or his executor or administrator, may maintain an action to recover his just proportion against his co-tenant, who has received more than his own just proportion, or against his executor or administrator. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1666.

§ 533. Action for cutting or carrying off trees or timber.

If any person cuts down or carries off any wood, underwood, tree, or timber, or girdles or otherwise despoils a tree on the land of another, without the owner's leave; or on the common, or other land, of a city, village, or town, without having right or privilege in those lands, or license from the proper officer; an action may be maintained against him, by the owner, or the city, village, or town, as the case may be. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1667.

§ 534. When treble damages may be recovered in such action.

In an action brought as prescribed in the last section, the plaintiff may state in his complaint the amount of his damages, and demand judgment for treble the sum, so stated. Thereupon, if the inquisition, or, where issues of fact are tried, the verdict, report or decision, awards him any damages, he is entitled to judg-

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ment for treble the sum so awarded, except that in either of the following cases, judgment must be rendered for single damages only:

1. Where the verdict, report, or decision finds affirmatively that the injury, for which the action was brought, was casual and involuntary; or that the defendant, when he committed the injury, had probable cause to believe that the land was his own.

2. Where the defendant has pleaded, and the verdict, report, or decision finds affirmatively, that the injury, for which the action was brought, was committed by taking timber, for the purpose of making or repairing a public road, or a public bridge, or by taking any wood, underwood, or tree, for a like purpose, by authority of a town officer having charge of such construction or repairs. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1668.

§ 535. Action for forcible entry or detainer; treble damages.

If a person is disseized, ejected, or put out of real property, in a forcible manner; or after he has been put out, is held and kept out, by force, or by putting him in fear of personal violence, he is entitled to recover treble damages, in an action therefor against the wrong-doer. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1669.

§ 536. Actions relating to real property situate without the state.

An action may be maintained in the courts of this state to recover damages for injuries to real estate situate without the state, or for breach of contracts or of covenants relating thereto, whenever such an action could be maintained in relation to personal property without the state. The action must be tried in the county in which the parties or some one thereof resides, or if no party resides within the state, in any county. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 982a.

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property, or any part thereof, at the sale. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2394.

§ 548. Effect of sale.

A sale, made and conducted as prescribed in this article, to a purchaser in good faith, is equivalent to a sale, pursuant to judgment in an action to foreclose the mortgage, so far only as to be an entire bar of all claim or equity of redemption, upon, or with respect to, the property sold, of each of the following persons:

1. The mortgagor, his heir, devisee, executor or administrator.

2. Each person claiming under any of them, by virtue of a title or of a lien by judgment or decree, subsequent to the mortgage, upon whom the notice of sale was served, as prescribed in this article.

3. Each person so claiming, whose assignment, mortgage, or other conveyance was not duly recorded in the proper book for recording the same in the county, or whose judgment or decree was not duly docketed in the county clerk's office, at the time of the delivery of a copy of the notice of said sale to the clerk of the county; and the executor, administrator, or assignee of such a person.

4. Every other person, claiming under a statutory lien or incumbrance, created subsequent to the mortgage, attaching to the title or interest of any person, designated in either of the foregoing subdivisions of this section.

5. The wife or widow of the mortgagor, or of a subsequent grantee, upon whom notice of the sale was served as prescribed in this article, where the lien of the mortgage was superior to her contingent or vested right of dower, or her estate in dower. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2395.

§ 549. Affidavits on sale.

An affidavit of the sale, stating the time when, and the place where, the sale was made; the sum bid for each distinct parcel, separately sold; the name of the purchaser of each distinct parcel; and the name of the person or persons, court officer or other officer, to whom the proceeds of the sale were paid, and the sums thereof must be made by the person who officiated as auctioneer upon the sale. An affidavit of the publication of the notice of sale, and of the notice or notices of postponement, if any, may be made by the publisher or printer of the newspaper in which they were published, or by his foreman or principal clerk. An affidavit of the affixing

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of a copy of the notice, at or near the entrance of the proper courthouse, may be made by the person who so affixed it, or by any person who saw it so affixed, at least eighty-four days before the day of sale. An affidavit of the affixing of a copy of the notice in the book, kept by the county clerk, may be made by the county clerk, or by any person who saw it so affixed, at least eighty-four days before the day of sale. An affidavit of the service of a copy of the notice upon the mortgagor or upon any other person, upon whom the notice must or may be served, may be made by the person who made the service. Where two or more distinct parcels are sold to different purchasers, separate affidavits may be made with respect to each parcel, or one set of affidavits may be made for all the parcels. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2396.

§ 550. When one affidavit suffices; printed notice to be annexed.

The matters required to be contained in any or all of the affidavits, specified in the last section, may be contained in one affidavit, where the same person deposes with respect to them. A printed copy of the notice of sale must be annexed to each affidavit; and a printed copy of each notice of postponement must be annexed to the affidavit of publication, and to the affidavit of sale. But one copy of the notice suffices for two or more affidavits, when they all refer to it and are annexed to each other and filed and recorded together. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2397.

§ 551. Affidavits may be filed and recorded.

The affidavits specified in the last two sections, may be filed in the office for recording deeds and mortgages, in the county where the sale took place. They must be recorded at length by the officer with whom they are filed, in the proper book for recording deeds. The original affidavits, so filed, the record thereof, and a certified copy of the record, are presumptive evidence of the matters of fact therein stated, with respect to any property sold which is situated in that county. Where the property sold is situated in two or more counties, a copy of the affidavits, certified by the officer with whom the originals are filed, may be filed and recorded in each other county, wherein any of the property is situated. Thereupon the copy and the record thereof have the like effect, with respect to the property in that county, as if the originals were duly filed and recorded therein. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2398.

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§ 552. Note upon record of mortgage.

A clerk or a register, who records any affidavits, or a certified copy thereof, filed with him, must make a note, upon the margin of the record of the mortgage, in his office, referring to the book and page, or the copy thereof, where the affidavits are recorded. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2399.

§ 553. Deed not necessary. When affidavits not necessary; but purchaser may require them.

The purchaser of the mortgaged premises, upon a sale conducted as prescribed in this article, obtains title thereto, against all persons bound by the sale, without the execution of a conveyance. Except where he is the person authorized to execute the power of sale, such a purchaser also obtains title, in like manner, upon payment of the purchase-money, and compliance with the other terms of sale, if any, without the filing and recording of the affidavits, as prescribed in the last section but one. But he is not bound to pay the purchase-money, until the affidavits, specified in that section, with respect to the property purchased by him, are filed, or delivered or tendered to him for filing. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2400.

§ 554. Costs allowed.

The following costs, in addition to the expenses specified in the next section, are allowed, in proceedings taken as prescribed in this article:

1. For drawing a notice of sale, a notice of the postponement of a sale, or an affidavit, made as prescribed in this article, for each folio, twenty-five cents; for making each necessary copy thereof, for each folio thirteen cents.

2. For serving each copy of the notice of sale, required or expressly permitted to be served by this article, and for affixing each copy thereof, required to be affixed upon the court-house, as prescribed in this article, one dollar.

3. For superintending the sale, and attending to the execution of the necessary papers, ten dollars. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2401.

§ 555. Expenses allowed.

The sums actually paid for the following services, not exceeding the fees allowed by law for those services, are allowed in proceedings, taken as prescribed in this article:

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1. For publishing the notice of sale, and the notice or notices of postponement, if any, for a period not exceeding twenty-four weeks.

2. For the services specified in section five hundred and forty-three of this chapter.

3. For recording the affidavits; and also, where the property sold is situated in two or more counties, for making and recording the necessary certified copies thereof.

4. For necessary postage and searches. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2402.

§ 556. Taxation of costs and expenses.

The costs and expenses must be taxed, upon notice, by the clerk of the county where the sale took place, upon the request and at the expense of any person, interested in the payment thereof. Such costs and expenses shall be taxed, and such taxation may be reviewed, in the same manner as costs in a civil action in the supreme court. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2403.

§ 557. Surplus money to be paid into supreme court.

An attorney or other person who receives any money, arising upon a sale, made as prescribed in this article, must, within ten days after he received it, pay into the supreme court the surplus, exceeding the sum due and to become due upon the mortgage, and the costs and expenses of the foreclosure, in like manner and with like effect, as if the proceedings to foreclose the mortgage were taken in an action, brought in the supreme court, and triable in the county where the sale took place. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2404.

§ 558. Petition for surplus.

A person, who had, at the time of the sale, an interest in or lien upon the property sold, or a part thereof, may, at any time before an order is made, as prescribed in the next section but one, file in the office of the clerk of the county, where the sale took place, a petition stating the nature and extent of his claim, and praying for an order, directing the payment to him of the surplus money, or a part thereof. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2405.

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§ 559. Proceedings on petition.

A person filing a petition, as prescribed in the last section, may, after the expiration of twenty days from the day of sale, apply to the supreme court, at a term held within the judicial district, embracing the county where his petition is filed, for an order, pursuant to the prayer of his petition. Notice of the application must be served, in the manner prescribed by law for the service of a paper upon an attorney in a civil action, in a court of record, upon each person, who has filed a like petition, at least eight days before the application; and also upon each person, upon whom a notice of sale was served, as shown in the affidavit of sale, or upon his executor or administrator. But, if it is shown to the court, by affidavit, that service upon any person, required to be served, cannot be so made with due diligence, notice may be given to him in any manner which the court directs. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2406.

§ 560. Order for distribution.

Upon the presentation of the petition, with due proof of notice of application, the court must make an order referring it to a suitable person to ascertain and report the amount due to the petitioner, and to each other person, which is a lien upon the surplus money; and the priorities of the several liens thereupon. Upon the coming in and confirmation of the referee's report, the court must make such an order, for the distribution of the surplus money, as justice requires. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2407.

§ 561. Limitation of last four sections.

The last four sections do not apply to surplus money, arising upon the sale of real property, of which a decedent died seized where letters testamentary or letters of administration, upon the decedent's estate, were, within two years before the sale, issued from a surrogate's court within the state, having jurisdiction to issue them. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2408.

§ 562. Delivery of certain affidavits to purchaser.

Each county clerk and register in this state, in whose office, affidavits in foreclosure of mortgages by advertisement, or the certified copies thereof, have been or shall be filed and recorded pursuant, to the provisions of this article is hereby authorized to deliver the same to the purchaser of the mortgaged property on the

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foreclosure sale, and such purchaser shall be entitled to such delivery. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 2408a.

§ 563. Application of this article to mortgages of the state.
This article does not affect any provision of law, inconsistent therewith, especially relating to the foreclosure of mortgages to the people of the state, or to the commissioners for loaning certain moneys of the United States. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 2409.

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ARTICLE 18.

(Article added by L. 1920, ch. 930, in effect April 15, 1921.)

PROCEEDINGS TO DISCOVER THE DEATH OF A TENANT FOR LIFE.

SECTION 570. Petition for production of tenant for life.
571. Contents of petition.
572. Service of petition and notice.
573. Proceedings upon presentation of petition.
574. Service of order; powers of court or referee.
575. Habeas corpus.
576. Report of referee.
577. Dismissal of petition when order complied with.
578. When life-tenant deemed dead, and petitioner let into possession.
579. Commission to be issued if life-tenant is without the state.
580. General provisions respecting the commission.
581. Petitioner to give notice of its execution.
582. Execution thereof.
583. Proceedings on return of commission.
584. Costs.
585. Property; when restored.
586. Remedy of person evicted for rents and profits.
587. Order not conclusive in ejectment.

§ 570. Petition for production of tenant for life.

A person entitled to claim real property, after the death of another who has a prior estate therein, may, not oftener than once in each calendar year, apply by petition to the supreme court, at a special term thereof, held within the judicial district, wherein the property, or a part thereof, is situated, for an order, directing the productiron of the tenant for life, as prescribed in this article, by a person, named in the petition, against whom an action of ejectment to recover the real property can be maintained, if the tenant for life is dead or, where there is no such person, by the guardian, husband, trustee, or other person, who has, or is entitled to, the custody of the person of the tenant for life, or the care of his estate. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2302.

§ 571. Contents of petition.

The petition must be in writing, and verified by the affidavit of the petitioner, to the effect, that the matters of fact therein set forth are true. It must contain:

1. A description of the real property, and a statement of the petitioner's interest therein, and of such other facts as show that the case is within the provisions of the last section.

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2. An averment that the petitioner believes that the person, upon whose life the prior estate depends, is dead, together with a statement of the grounds upon which the petitioner's belief is founded. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2303.

§ 572. Service of petition and notice.

A copy of the petition, including the affidavit, together with notice of the time and place at which the petition will be presented, must be personally served, at least fourteen days before its presentation, upon the person required, by the prayer thereof, to produce the tenant for life. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2304.

§ 573. Proceedings upon presentation of petition.

Upon the presentation of the petition and affidavit, with due proof, by affidavit, of service of a copy thereof, and of the notice, if sufficient cause to the contrary is not shown by the adverse party, the court must either issue a commission, as prescribed in the following sections of this article; or make an order, directing the adverse party, at a time and place therein specified, before the court, or a referee therein designated, to produce the person upon whose life the prior estate depends, or, in default thereof, to prove that he is living. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2305.

§ 574. Service of order; powers of court or referee.

Where an order, requiring the production of the tenant for life, or proof that he is living, is made as prescribed in the last section, a certified copy thereof must be served, at least fourteen days before the time therein specified, upon the person required to make the production or proof, or upon his attorney. Upon presentation of proof of service, by affidavit, the court or the referee must, at the time and place specified in the order, or at the time and place to which the hearing may be adjourned, hear the allegations and proofs of the parties, respecting the identity of any person produced, with the person whose death is in question; or, if the latter person is not produced, respecting the reasons for the failure to produce him, and whether he is living. Where a reference is appointed, he has the same powers, and is entitled to the same compensation, as a referee appointed for the trial of an issue in a civil action in a court of record. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2306.

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§ 575. Habeas corpus.

If it appears, by affidavit, to the satisfaction of the court, that the person required to be produced is imprisoned within the state, for any cause, except upon a sentence for a felony; or is kept or detained, within the state, by any person, the court may, either before or after making the order for production, issue a writ of habeas corpus to bring him before it, or before the referee, as the case requires. The writ must be served and executed, and disobedience thereto may be punished, as where a writ of habeas corpus is issued, to inquire into the cause of the detention of a prisoner. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2307.

§ 576. Report of referee.

The referee must deliver his report to the petitioner, or file it with the clerk, within ten days after the case is closed. He must state therein, whether any person was or was not produced before him, as being the person whose death is in question. He must append thereto, in the form of depositions, the proofs, if any, respecting the identity of any person so produced, with the person whose death is in question; or if no one is so produced, upon the question whether the latter person is living. He must also state, in his report, his conclusions upon the questions controverted before him. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2308.

§ 577. Dismissal of petition when order complied with.

If it appears, to the satisfaction of the court, upon the referee's report, and the proofs thereto appended; or, where a referee is not appointed, upon the allegations and proofs of the parties before the court; that the party, required to produce the tenant for life, or to prove his existence, has fully complied with the order, the court must make an order dismissing the petition, and requiring the petitioner to pay the costs of the proceedings. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2309.

§ 578. When life-tenant deemed dead, and petitioner let into possession.

If it appears, from the referee's report, or upon the hearing before the court, that the person, upon whose life the prior estate depends, was not produced; and if the party required to produce him, or to prove his existence, has not proved, to the satisfaction of the court, that he is living; a final order must be made, declaring that he is presumed to be dead, for the purpose of the proceedings, and directing that the petitioner be forthwith let into possession

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of the real property, as if that person was actually dead. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 2310.

§ 579. Commission to be issued if life-tenant is without the state.

If before or at the time of the presentation of the referee's report to the court, or, where a referee is not appointed, at any time before the final order is made, the party, upon whom the petition and notice are served, presents to the court presumptive proof, by affidavit, that the person, whose death was in question, is, or lately was, at a place certain, without the state, the court must make an order, requiring the petitioner to take out a commission, directed to one or more persons, residing at or near that place, either designated in the order, or to be appointed upon a subsequent application for the commission for the purpose of obtaining a view of the person, whose death is in question, and of taking such testimony respecting his identity, as the parties produce. The order must also direct that the proceedings upon the petition be stayed, until the return of the commission; and that the petition be dismissed, with costs, unless the petitioner takes out the commission within a time specified in the order, and diligently procures it to be executed and returned, at his own expense. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 2311.

§ 580. General provisions respecting the commission.

It is not necessary, unless the court specially so directs, that the witnesses to be examined should be named in the commission, or that interrogatories should be annexed thereto. The commission must be executed and returned, and the deposition taken must be filed and used, as prescribed by law for depositions taken without the state for use within the state, except as otherwise specially prescribed in this article. (Added by L. 1920, ch. 930, in effect April 15, 1921.)
Derivation: Code of Civil Procedure, § 2312.

§ 581. Petitioner to give notice of its execution.

The petitioner must give to the adverse party, or his attorney, written notice of the time when, and the place where, the commissioner or commissioners will attend, for the purpose of executing the commission, as follows:

1. If the place, where the commission is to be executed, is within the United States, or the dominion of Canada, he must give at least two months' notice.

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2. If it is within any of the West India islands, he must give at least three months' notice.

3. In every other case, he must give at least four months' notice.

Notice may be given, as required by this section, by serving it as prescribed by law for the service of a paper upon an attorney, in a civil action in the supreme court. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2313.

§ 582. Execution thereof.

The commissioner or commissioners possess the same powers, and must proceed in the same manner, as a referee, appointed by an order requiring the production of the tenant for life, or proof of his existence; except that they cannot proceed, unless a person is produced before them, as being the person whose death is in question. The return to the commission must expressly state whether any person was or was not so produced. The testimony, respecting the identity of a person so produced, must be taken, unless otherwise specially directed by the court, as prescribed by law, for taking the deposition of a witness upon oral interrogatories; except that it is not necessary to give any other notice of the time and place of examination, than that prescribed in the last section. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2314.

§ 583. Proceedings on return of commission.

Upon the return of the commission, the proceedings are the same as upon the report of a reference, as prescribed in sections five hundred and seventy-seven and five hundred and seventy-eight of this chapter; but the court may, in its discretion, receive additional proofs from either party. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2315.

§ 584. Costs.

Where costs of a special proceeding, taken as prescribed in this article, are awarded, they must be fixed by the court at a gross sum, not exceeding fifty dollars, in addition to disbursements. Where provision is not specially made in this article for the award of costs, they may be denied, or awarded to or against either party, as justice requires. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2316.

§ 585. Property; when restored.

The possession of real property, which has been awarded to the

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petitioner; as prescribed in this article, upon the presumption of the death of the person, upon whose life the prior estate depends, must be restored, by the order of the court, to the person evicted, or to his heirs or legal representatives, upon the petition of the latter, and proof, to the satisfaction of the court, that the person presumed to be dead is living. The proceedings upon such an application are the same, as prescribed in this article, upon the application of the person to whom possession is awarded. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2317.

§ 586. Remedy of person evicted for rents and profits.

A person evicted, as prescribed in this article, may, if the presumption, upon which he is evicted, is erroneous, maintain an action against the person who has occupied the property, or his executor or administrator, to recover the rents and profits of the property, during the occupation, while the person, upon whose life the prior estate depends, is or was living. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2318.

§ 587. Order not conclusive in ejectment.

A final order, made as prescribed in this article, awarding to the petitioner the possession of real property is presumptive evidence only, in an action of ejectment, brought against him by the person evicted, or in an action brought as prescribed in the last section, of the life or death of the person, upon whose life the prior estate depends. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 2319.

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ARTICLE 19.

(Article added by L. 1920, ch. 930, in effect April 15, 1921.)

PROCEEDINGS FOR VOLUNTARY PARTITION OF INFANT'S OR INCOMPETENT'S REAL PROPERTY.

SECTION 590. Petition by guardian or committee for authority to agree.
591. Contents of petition.
592. Court may authorize partition.
593. Effect of releases.

§ 590. Petition by guardian or committee for authority to agree.

Where an infant, idiot, lunatic, or habitual drunkard, holds real property, in joint tenancy or in common, the general guardian of the infant, or the committee of the idiot, lunatic, or habitual drunkard, may apply to the supreme court or to the county court of the county, wherein the real property is situated, for authority to agree to a partition of the real property. Where such application affects the interests of an incompetent person who has been committed to a state institution, and is an inmate thereof, notice of such application must be given to the superintendent, acting superintendent, or state officer having special jurisdiction over the institution where the incompetent person is confined. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1590.

§ 591. Contents of petition.

Such an application must be by a petition, which must describe the real property proposed and to be partitioned; must state the rights and interests of the several owners thereof; must specify the particular partition proposed to be made; and must be verified by affidavit. The court may order notice of the application to be given to such persons as it thinks proper. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1591.

§ 592. Court may authorize partition.

If, after due inquiry into the merits of the application, by a reference or otherwise, the court is of the opinion that the interests of the infant, or of the idiot, lunatic, or habitual drunkard will be promoted by the partition, it may make an order authorizing the petitioner to agree to the partition proposed, and in the name of the infant, or of the idiot, lunatic, or habitual drunkard, to execute

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releases of his right and interest in and to that part of the property which falls to the shares of the other joint-tenants or tenants in common. The court may, in its discretion, for the furtherance of the interests of said infant, idiot, lunatic, or habitual drunkard, direct partition to be so made as to set off to him or them his or their share in common with any of the other owners, provided the consent in writing thereto of such owners shall be first obtained. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1592.

§ 593. Effect of releases.

Releases so executed have the same validity and effect, as if they were executed by the person in whose behalf they are executed, and as if the infant was of full age, or the idiot, lunatic, or habitual drunkard was of sound mind, and competent to manage his affairs. (Added by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Code of Civil Procedure, § 1593

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ARTICLE 20.

(Article renumbered by L. 1920, ch. 930, in effect April 15, 1921.)

LAWS REPEALED; CONSTRUCTION; WHEN TO TAKE EFFECT.

SECTION 600. Laws repealed.
601. Construction.
602. When to take effect.

§ 600. Laws repealed.

Of the laws enumerated in the schedule hereto annexed, that portion in the last column is hereby repealed. (Renumbered by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Real Property Law, § 300.

§ 601. Construction.

This chapter does not alter or impair any vested estate, interest or right, or alter or affect the construction of any conveyance, will or other instrument which has taken effect at any time before this chapter becomes a law. (Renumbered by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Real Property Law, § 1. For remainder of section, see this chapter, § 2.

§ 602. When to take effect.

This chapter shall take effect immediately. (Renumbered by L. 1920, ch. 930, in effect April 15, 1921.)

Derivation: Real Property Law, § 301.

SCHEDULE OF LAWS REPEALED.

*Revised Statutes....	Part 2, chapter 1, title 1, sections 1–4, 8–20	
Revised Statutes....	Part 2, chapter 1, title 2, sections 1–62, 64–148	
Revised Statutes....	Part 2, chapter 1, titles 3–5.....	All
Revised Statutes....	Part 2, chapter 2.....	All
Revised Statutes....	Part 2, chapter 3.....	All
Revised Statutes....	Part 2, chapter 7, title 1.....	All
Laws of	Chapter	Section
1782.....	2.....	All
1784.....	18.....	All (8th Sess.)†

* See L. 1909, ch. 240, § 92.

† See L. 1900, ch. 240, § 92.

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Laws of	Chapter	Section
1786.....	12.....	All
1787.....	4.....	All
1787.....	36.....	All
1787.....	37.....	All
1787.....	43.....	All
1787.....	44.....	Part relating to real property
1787.....	48.....	All
1788.....	7.....	All
1788.....	36.....	26–28
1788.....	44.....	All
1788.....	45.....	All
1788.....	46.....	32–34
1792.....	51.....	All
1793.....	50.....	All
* 1794.....	1.....	1, 3–7
1794.....	44.....	All
1797.....	18.....	All
1798.....	17.....	All
1798.....	72.....	All
1798.....	78.....	All
1798.....	95.....	3
1799.....	44.....	7
1800.....	61.....	All
1801.....	90.....	25, 26
1801.....	155.....	All
1801.....	156.....	All
1801.....	169.....	All
1802.....	49.....	All
1804.....	109.....	26
1805.....	25.....	All
1805.....	98.....	All
1805.....	128.....	3
1806.....	17.....	All
1806.....	167.....	All
1806.....	168.....	All
1807.....	74.....	1
1807.....	123.....	2
1808.....	175.....	All

* See L. 1909, ch. 240, § 95.

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Laws of	Chapter	Section
1809.....	44.....	1
1811.....	1.....	2
1811.....	7.....	All
1811.....	95.....	All
1811.....	238.....	4
R. L. 1813...	31.....	All
R. L. 1813...	32.....	All
R. L. 1813...	80.....	1–4, 7–9
R. L. 1813...	97.....	All
1814.....	5.....	All
1816.....	119.....	All
1817.....	69.....	1, 3–5
1818.....	55.....	5, 6
1819.....	25.....	All
1821.....	136.....	All
1822.....	245.....	1–4, 6
1822.....	254.....	All
1823.....	263.....	All
1825.....	307.....	All
1826.....	260.....	All
1826.....	297.....	1–3
1826.....	313.....	All
1827.....	204.....	All
1828.....	241.....	All
1828.....	20.....	15, ¶¶ 25–29, 46–47 (2d Meet.)
1828.....	21.....	1, ¶¶ 5, 8, 9, 14–16, 66, 94, 96, 97, 210, 226, 327, 368, 399, 453, 485 (2d Meet.)
1829.....	222.....	All
1830.....	171.....	All
1830.....	320.....	10–13
1831.....	172.....	All
1832.....	171.....	All
1833.....	167.....	All
1834.....	272.....	All
1835.....	275.....	All
1836.....	339.....	All
1838.....	32.....	All

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Laws of	Chapter	Section
1839.....	295.....	5
1840.....	238.....	1
1840.....	318.....	Part relating to real property
1841.....	261.....	Part relating to real property
1843.....	87.....	All
1843.....	145.....	All
1843.....	199.....	All
1843.....	210.....	5
1845.....	109.....	All
1845.....	110.....	All
1845.....	115.....	All
1846.....	74.....	Part relating to real property
1846.....	182.....	3
1846.....	274.....	All
1847.....	170.....	All
1848.....	195.....	All
1853.....	303.....	All
1854.....	111.....	All
1855.....	17.....	All
1855.....	432.....	Part relating to real property
1855.....	547.....	All
1856.....	61.....	All
1857.....	576.....	All
1858.....	259.....	All
1860.....	322.....	All
1860.....	345.....	All
1860.....	396.....	All
1862.....	365.....	All
1863.....	246.....	All
1865.....	421.....	All
1867.....	557.....	All
18[illegible].....	513.....	All
18[illegible].....	798.....	All
18[illegible].....	208.....	All
18[illegible].....	120.....	All
18[illegible].....	141.....	All
18[illegible].....	358.....	All
1[illegible].....	551.....	All
1[illegible].....	583.....	All

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Laws of	Chapter	Section	
* 1794.....	1.....	1, 3–7	
1874.....	261.....	All	
1875.....	38.....	All	
1875.....	336.....	All	
1875.....	545.....	All	
1877.....	111.....	All	
1879.....	249.....	All	
1879.....	310.....	All	
1880.....	115.....	All	
1880.....	300.....	All	
1880.....	530.....	All	
1882.....	100.....	All	
1882.....	275.....	All	
1882.....	278.....	All	
1883.....	80.....	All	
1884.....	26.....	All	
1884.....	326.....	All	
1886.....	40.....	All	
1886.....	257.....	All	
1887.....	539.....	All	
1888.....	246.....	All	
1889.....	42.....	All	
1889.....	406.....	1	
1890.....	61.....	All	
1890.....	173.....	1	
1890.....	282.....	All	
1890.....	475.....	All	
1890.....	502.....	All	
1890.....	503.....	All	
1891.....	100.....	All	
1891.....	155.....	All	
1891.....	172.....	All	
1891.....	209.....	All	
1892.....	208.....	All	
1892.....	516.....	Part	relating to real property
1892.....	616.....	All	
1893.....	123.....	All	
1893.....	182.....	All	

* So in original.

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1893.....	207.....	All
1893.....	599.....	All
1893.....	701.....	Part relating to real property
1894.....	315.....	All
1894.....	729.....	All
1895.....	171.....	All
1895.....	525.....	All
1895.....	793.....	All
1895.....	886.....	All
1895.....	1022.....	All
1896.....	249.....	Part relating to real property
1896.....	547.....	All, except §§ 280–296
1896.....	572.....	2, 3
1897.....	136.....	All
1897.....	277.....	All
1897.....	593.....	All
1897.....	756.....	All
1898.....	174.....	All
1898.....	311.....	All
1898.....	338.....	All
1899.....	147.....	All
1899.....	542.....	All
1900.....	227.....	All
1901.....	84.....	All
1901.....	166.....	All
1901.....	287.....	All
1901.....	291.....	Part relating to real property
1901.....	481.....	All
1901.....	611.....	All
1902.....	151.....	All
1903.....	88.....	All
1903.....	98.....	All
1903.....	419.....	All
1903.....	432.....	All
1903.....	490.....	All
1904.....	235.....	All
1904.....	528.....	All
1904.....	690.....	All
1904.....	692.....	Part relating to real property

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1904.....	742.....	All
1905.....	329.....	All
1905.....	377.....	All
1905.....	393.....	Part relating to real property
1905.....	449.....	All
1905.....	450.....	All
1906.....	398.....	All
1907.....	242.....	All
1907.....	289.....	All
1907.....	347.....	All
1907.....	621.....	All
1907.....	633.....	All
1908.....	35.....	All
1908.....	61.....	All
1908.....	136.....	All
1908.....	173.....	Part relating to real property
1908.....	444.....	All

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INDEX TO REAL PROPERTY LAW.

(REFERENCE IS MADE TO SECTIONS.)

Section.

ACCUMULATIONS:
- directions for, when valid 61
- for benefit of incorporated colleges, etc..... 61
- anticipation of 62
- rents and profits undisposed of, who entitled to 63

ACKNOWLEDGMENT AND PROOF OF INSTRUMENTS: *See Recording Instruments.*

ADULTERY:
- of wife as bar to dower..... 196

ADVERSE POSSESSION:
- effect of grant or mortgage of real property adversely possessed... 260

ALIENATION:
- suspension of power of 42
- successive life estates 43
- limitations in alternative 51
- of trust interest 103
- computation of term of suspension in powers..... 178

ALIENS:
- resident, deposition of 12
- acquisition and transfer of real property by..... 13
- marriage with, effect of..... 14
- title through 15
- liabilities of alien holder of real property..... 16

ANCIENT CONVEYANCES:
- abolished 241

ANCIENT MORTGAGES:
- discharge of, when mortgagor may petition for..... 340
  - presentation of petition..... 341
  - order to show cause..... 342
    - proceedings thereon 343
  - when county clerks to discharge mortgage of record..... 344

ANNUITIES:
- apportionment of 275

ANTE-NUPTIAL AGREEMENTS:
- when dower barred by jointure..... 197
- by pecuniary provisions..... 198

Digitized by Google

SECTION

APPORTIONMENT:
between life-tenant and remainderman 223

APPURTENANCES: *See Conveyances; Leases; Mortgages.*

ASSIGNMENT: *See Lease; Mortgage.*

ATTESTATION:
of deeds, when necessary 242

ATTORNEY, POWERS OF:
recording 294
married woman may release dower by 207

ATTORNMENT:
by tenant 224

BARGAIN AND SALE:
deed of, declared a grant 246

BONA FIDE PURCHASERS:
rights of, protected 266
when unrecorded deed, void as against 291

BOARDS OF TRADE:
grants for regulated 115

CANCELLATION OF RECORDS:
actions to have certain instruments cancelled of record 329

CEMETERY LOTS AND LANDS:
trusts for care of cemetery lots, etc. 114-a
cemetery lands not to be sold or mortgaged 450
acquisition of, in certain counties 451

CESTUI QUE TRUST: *See Trusts.*

CHAMBERS OF COMMERCE:
grants for regulated 115

CHARITABLE USES:
grants and devises for 113
certain educational and other charitable uses authorized 114
certain grants for charitable uses regulated 115

CHATTELS REAL: *See Estates.*

CITIZENS: *See Aliens.*
capacity to hold real property 10

CLAIM, DETERMINATION OF: *See Real Property.*

COMMITTEE OF LUNATIC:
investments in certain stocks regulated 116

COMMON, TENANCY IN:
estates in severalty, joint tenancy and in common 65
when estate in common, etc. 66

CONDITIONAL LIMITATION:
what is a 53

CONSIDERATION:
rights of purchasers or encumbrancer for valuable consideration 266

CONSTRUCTIVE TRUSTS:
grant to one where consideration paid by another 94

CONTINGENT REMAINDERS:
when future estates are contingent 40

CONTRACTS FOR SALE OF LAND: *See Conveyances.*
when contract to lease or sell void 259
Power of equity to compel specific performance 270

CONTROVERSIES:
compromise where interests of infants, incompetents or persons unknown or not in being affected 73

Digitized by Google

SECTION

CONVEYANCES:
definitions and use of terms 240
construction of terms..... 240
ancient conveyances abolished 241
written, when necessary 242
wills and implied trusts, not applicable to..... 242
of fee or freehold, subscription and execution of..... 243
when takes effect 244
what estate passes 245
cannot be greater than that of grantor 245
deeds of bargain and sale..... 246
of lease and release 246
by tenant for life or year of greater estate than possessed..... 247
where property is leased, effect 248
covenants not implied 251
lineal and collateral warranties abolished..... 252
construction of, in grants of freehold interest..... 253
seizin. 253
quiet enjoyment 253
freedom from encumbrance 253
further assurance 253
warranty of title 253
grantor has not encumbered 253
to bind representative of grantor..... 257
"appurtenances and all estate and rights of grantor," construction of 255
in executors or trustee's deed 256
deed with full covenants, short form..... 258
executors 258
void if adversely possessed 260
contracts for sale of land, when writing necessary..... 259
fraudulent, as to purchasers and encumbrances..... 262
effect of notice 262
as to creditors 263
as to their heirs and assigns 264
intent, questions of fact..... 265
rights of bona fide purchasers 266
with power to revoke, determine or alter..... 267
disaffirmance by executors 268
by creditor of deceased insolvent debtor..... 268
action to set aside..... 268
apportionment of rents, annuities, dividends and other payments.... 275
specific performance, equity may compel..... 270
penalty for use of long forms..... 327
recording. (*See Recording Instruments.*)
grants and devises for charitable and other purposes.....113-115
maintenance of telegraph, etc., wires, no presumption of grant..... 261
transfers of interest in decedents' estates..... 274
of registered property. (*See Title, Registration of.*)

CORPORATIONS:
acknowledgment by 309
grants to certain corporations, authorized..... 114

Digitized by Google

COVENANTS: *See Conveyances; Leases; Mortgages.* SECTION.
CREDITORS:
may reach surplus income of trust property 98
trust to sell lands for benefit of 96
termination of 110
beneficial power subject to 159
may compel execution of trust power 162
assignments in fraud of, disaffirmance by executor 268
DECEDENTS' ESTATES:
transfers and mortgages of interest in 274
DEEDS: *See Conveyances.*
DEFINITIONS:
real property 2, 290
lands 2
remainder 38
reversion 39
issue 48
heirs 48
conditional limitation 53
power 131
grantor 132
grantee 132
estate 240
conveyances 240, 290
appurtenances 255
purchaser 290
recording officer 290
DETERMINATION OF CLAIM: *See Real Property.*
DEVISE OF LANDS: *See Conveyances.*
those capable of taking by devise 10
aliens 13
effect of power to devise in certain cases 152
mortgage on lands devised 250
DISCHARGE OF MORTGAGES: *See Ancient Mortgages; Mortgages.*
DIVORCE: *See Dower.*
DOWER:
of widow, what it consists of 190
in lands exchanged, election 191
when deemed to have elected 191
in lands mortgaged before marriage 192
purchase money mortgage superior to 193
surplus proceeds of sale 194
widow of mortgagee not endowed 195
barred by divorce for misconduct of wife 196
by jointure 197
by pecuniary provisions for wife 198
election between jointure and dower 199
devise and dower 200
when deemed to have made 201
court may order time extended 201
action for dower:
limitation for action for dower 460
necessary defendants 461
who may be joined as defendants 462
actions; where defendants claim in severalty 463
damages to be recovered; how estimated 464
damages; in action against alienee of husband 465
damages; where several parcels are affected 466
damages apportioned between heir and alienee 467
action barred by assignment of dower 468
collusive recovery not to prejudice infant 469
complaint 470
interlocutory judgment for admeasurement 471
dower, how admeasured 472
report thereupon 473

Digitized by Google

DOWER—(Continued).
action for dower—(Continued). SECTION
setting aside report ... 474
fees and expenses ... 475
final judgment ... 476
plaintiff may recover sum awarded; court may modify judgment ... 477
junior incumbrancers; not affected by admeasurement ... 478
appeal not to stay execution, if undertaking is given ... 479
plaintiff may consent to receive a gross sum ... 480
defendant may consent to pay it; proceedings thereupon ... 481
interlocutory judgment for sale ... 482
direction that a part be laid off ... 483
liens to be ascertained ... 484
satisfaction or protection of lien ... 485
payment of taxes, assessments and water rates out of proceeds ... 486
report of sale ... 487
final judment upon confirming sale ... 488
damages against grantee of premises subject to dower ... 489
certain provisions made applicable ... 490
action for ejectment by reversioner or remainderman after determination of particular estate ... 491
beneficial provision in lieu of, when deemed forfeited ... 202
acts of husband cannot defeat ... 203
of a widow's quarantine ... 204
widow may bequeath crop ... 205
release by divorced woman ... 206
by attorney, married woman may ... 207
EDUCATIONAL USES:
grants and devises of real property for ... 113–115
accumulations for benefit of incorporated colleges, etc ... 61
EJECTMENT: *See Lease.*
ELECTRIC WIRES:
maintenance of, no presumption of grant ... 261
ESTATES:
enumeration of ... 30
in fee simple and fee simple absolute, defined ... 31
tail abolished; remainders thereon ... 32
of inheritance and for life, freeholds ... 33
for years, chattels real ... 33
at will and by sufferance, chattel interests ... 33
for life of another ... 34
in possession and expectancy, defined ... 35
in expectancy, divisions of ... 36
future, what are ... 37
when vested ... 40
when contingent ... 40
reversions ... 39
successive, for life, limitation of ... 43
for life of another, remainder on ... 44
for life as remainder on term of years ... 47
chattels real, limitations of ... 49
contingent creation of ... 50
future, creation of ... 50
in alternative ... 51
valid though contingency improbable ... 52
expectant, when defeated ... 57
qualities of ... 59
accumulations, directions for ... 61
when deemed created ... 64
in severalty ... 65
in common; in joint tenancy ... 65, 66
which may be registered ... 378
decedents', transfers and mortgages of interest in ... 274

Digitized by Google

MORTGAGES — (Continued). SECTION
certain deeds deemed 320
execution of certificates of payment and discharge..... 333
recording discharge of 321, 333
in counties embraced in cities of first class..... 322
where property lies in more than one county..... 323
assignment, effect of 324
penalty for use of long forms..... 327
recording. *See Recording Instruments.*
of interest in decedent's estate 274
assignment of mortgage required in lieu of certificate of discharge.. 275
registration of 415, 416
on registered property, assignment of..... 418
on registered property enforced as now allowed by law..... 420
proceedings to foreclose a mortgage by advertisement:
when mortgage may be foreclosed..... 540
notice of sale; how given..... 541
notice of sale; how served..... 542
duty of county clerk..... 543
contents of notice of sale..... 544
sale; how postponed 545
sale; how conducted 546
mortgagee or successor in interest may purchase..... 547
effect of sale 548
affidavits on sale 549
when one affidavit suffices; printed notice to be annexed..... 550
affidavits may be filed and recorded..... 551
note upon record of mortgage..... 552
deed not necessary; when affidavits not necessary; but purchaser may require them..... 553
costs allowed 554
expenses allowed 555
taxation of costs and expenses..... 556
surplus money to be paid into supreme court..... 557
petition for surplus..... 558
proceedings on petition..... 559
order for distribution 560
limitation of last four sections..... 561
delivery of certain affidavits to purchaser..... 562
application of this article to mortgages of the state..... 563
NUISANCE:
action for 529
PARTITION:
proceedings for voluntary partition of infant's or incompetent's real property.
petition by guardian or committee for authority to agree..... 590
contents of petition..... 591
court may authorize partition..... 592
effect of releases..... 593

Digitized by Google

PERSONS NOT IN BEING: SECTION
compromise of controversies where interests affected..... 73
POSTHUMUS CHILDREN:
take as if born in life of parent..... 56
POWER OF ALIENATION:
suspension of. *See Alienation.*
POWER OF ATTORNEY: *See Recording Instruments.*
POWERS:
certain devises deemed 97
effect of article 130
power, defined 131
grantor, defined 132
grantee, defined 132
division of 133
general power, what is 134
special power 135
beneficial power 136
general power in trust..... 137
special power in trust..... 138
capacity to grant 139
how may be granted..... 140
capacity to take and execute..... 141
of married woman 142
special and beneficial power..... 143
reservation of 144
to revoke, effect of..... 145
to sell in a mortgage..... 146
when a lien 147
when irrevocable 148
of disposition to owner of estate for life or years, fee as to creditors, etc. 149
to owner of no particular estate, effect of..... 150
when grantee has absolute fee..... 151
when deemed absolute..... 153
to devise in certain cases, effect of..... 152
subject to condition 154
of life tenant to make leases..... 155
mortgage by, effect of 156
trust, when imperative..... 157
distribution among beneficiaries..... 158
beneficial, subject to creditors 159
death of trustee, execution of..... 160
when devolves on court..... 161
creditors, when may compel execution of..... 162
defective execution of 163
insolvent assignment, effect of..... 164
execution of, written instrument necessary..... 165
by survivors 166

Digitized by Google

POWERS—(Continued). SECTION
to dispose by devise 167
by grant 168
direction by grantor, insufficient, does not render void 169
when need not be followed 170
nominal conditions disregarded 171
intent of grantor to be observed 172
consent of grantor or third person to execution of 173
of all or survivors 174
omission to recite power 175
when devise operates as an execution of 176
disposition not void because too extensive 177
suspension, computation of terms of 178
capacity to take under 179
defective execution of, purchase under 180
fraud, how effected by 181
certain provisions relating to trusts, application of 182
PROOF OF DEEDS: *See Recording Instruments.*
PURCHASERS:
defined 290
purchase under defective execution 180
of trust property protected 104, 108
bona fide, protected 266
when unrecorded deed void as against 291
no trust implied as against bona fide 95
QUARANTINE:
of widow 204
QUIETING TITLE TO REAL PROPERTY: *See Title.*
REAL PROPERTY:
definition of 2
capacity to hold and transfer 10-18
action to compel the determination of a claim to real property:
who may maintain an action 500
complaint 501
proceedings when defendant denies plaintiff's title 502
proceedings when defendant pleads title 503
proceedings the same as in ejectment 504
proceedings when defendant claims in reversion or remainder 505
judgment awarding defendant possession 506
judgment for plaintiff 507
effect of judgment 508
action to determine widow's dower 509
proceedings, if plaintiff admits defendant's claim 510
proceedings when defendant's claim is denied 511
this article applies to corporations 512
situate without state, actions relating to 536
RECORDING INSTRUMENTS:
affecting real property, definitions 290
does not apply to certain leases 290

Digitized by Google

RECORDING INSTRUMENTS—(Continued). SECTION
in what county required 291
failure to record, effect of 292
acknowledgment, by whom 292
conveyance heretofore acknowledged or proved 293
executory contracts 294
powers of attorney 294
letters patent 295
copies of instruments which are in Secretary of State's office 296
certified copies may be recorded 297
within state, who may take 298
acknowledgment:
in other states, who may take 299
elsewhere 300
in foreign countries 301
by married women 302
requisites of 303
proof of subscribing witness 304
compelling witnesses to testify 305
certificate, contents of 306
when to state time and place 307
when must be under seal 308
to be recorded 318
by corporation 309
certificate, form of 309
authentication of county clerk, when necessary 310
when other, necessary 311
certificate, contents of 312
malfeasance of officers, penalty for 330
conveyances acknowledged without state, where parties are dead 313
witness dead, proof when 314
recording books 315
indexes 316
order of recording 317
time of recording 319
certain deeds deemed mortgages 320
discharge of mortgage, recording 321, 333
in counties embraced in cities of first class 322
where property lies in more than one county 323
assignment of mortgage, effect of recording 324
conveyances made by treasurer of Connecticut 325
revocation of power of attorney 326
penalty for use of long forms 327
certain acts not affected 328
actions to have certain instruments cancelled of record 329
officers guilty of malfeasance liable for damages 330
decrees and laws of foreign countries, appointing agents and attorneys 331

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RECORDING INSTRUMENTS—(Continued). SECTION
record of certain conveyances validated 332
execution of certificates of payment 333
discharge of mortgages 333
when conveyances not to be recorded 333
maps to be filed of lots or plots 334
filing of maps in Suffolk county 335
REGISTRATION OF TITLE: *See Title, Registration of.*
RELEASE:
of rents reserved by lease in perpetuity 72
lease and, deemed a grant 246
divorced woman may release dower 206
married woman may release dower by attorney 207
RELIGIOUS USES:
grants and devises for 113-115
REMAINDER:
defined 38
vested or contingent, distinction between 40
vested remainder:
power of appointment not to prevent vesting 41
on estates for life of another 44
when limited on more than two life estates 45
contingent, on what event may be limited 46
on term of years 47
in alternative 51
valid, though contingency improbable 52
conditional limitations, defined 53
when estate commences 55
posthumous children 56
cannot be defeated by act of holder of particular estate 57
not defeated by determination of precedent estate 58
contingent:
to persons unknown, sale or mortgage of real property held by tenant 67
application, how made 68
instruments upon sale or lease 70
REMAINDERMAN:
action by 531
RENTS AND PROFITS: *See Accumulations.*
disposition of 60
reserved by leases in perpetuity, release of 72
apportionment of 275
RESULTING TRUSTS: *See Trusts.*
REVERSIONS: *See Estates.*
ST. LAWRENCE COUNTY:
mines of lead or copper in 18

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SALE: SECTION
of real property held by tenant for life 67
application, how made 68
order of sale 68
how conducted 69
instruments upon 70
consent of parties in nterest to be filed 70
disposition of proceeds 71
SHELLEY'S CASE:
abolition of rule in 54
STATUTE OF FRAUDS: *See Frauds.*
SUFFOLK COUNTY:
filing of maps 335
SUSPENSION OF POWER OF ALIENATION: *See Alienation.*
TELEGRAPH, TELEPHONE, ETC., WIRES:
maintenance of, no presumption of grant 261
TENANT: *See Conveyances; Lease.*
TENANT FOR LIFE:
proceedings to discover the death of:
petition for production of tenant for life 570
contents of petition 571
service of petition and notice 572
proceedings upon presentation of petition 573
service of order; powers of court or referee 574
habeas corpus 575
report of referee 576
dismissal of petition when order complied with 577
when life-tenant deemed dead, and petitioner let into possession. 578
commission to be issued in life-tenant 579
general provisions respecting the commission 580
petitioner to give notice of its execution 581
execution thereof 582
proceedings on return of commission 583
costs 584
property; when restored 585
remedy of person evicted for rents and profits 586
order not conclusive in ejectment 587
TENANT IN COMMON:
action by 532
TIMBER:
action for cutting or carrying off 533
treble damages 534
TITLE, ACTION TO QUIET:
special proceeding for, can be maintained, when 360
petition for 361
to be presented, where 361
form of 361
order for publication of notice to show cause as to 362
form of 362

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SECTION

TITLE, ACTION TO QUIET.—(Continued).
when property subdivided, proceedings for 363
owners may unite in 363
hearing and final order upon non-appearance of adverse claimants .. 364
hearing, etc., upon appearance of adverse claimants 365
notice of pendency of action to be filed 366
no final order to be made without 366
fees for 366
TITLE, REGISTRATION OF:
petition to register title to real property 370
petitions and proceedings to be in the supreme court 371
title part of special term 371
county clerks and registers to be registrars of title 372
registrar's bond 373
deputy registrars' powers and duties 374
compenstion of registrars and deputy registrars, official examiners of title and registration clerks 375
disposition of fees received by registrar 376
official examiners of title 377
what owners may apply 378
what titles may be registered 378
contents of application for registration 379
other papers to be filed 379
examiner's report of title 380
other evidences of title 380
survey map, or plan to be filed 381
notice of petition and of pendency of proceeding 382
filing of caution 383
agent of non-resident applicant 384
proceedings upon the petition; notice of hearing 385
form of notice to parties 386
summons and notice to be posted on the land 387
guardian ad litem 388
any person interested may appear and defend 389
title in lands vested 390
clouds thereon removed 390
final orders conclusive; to be entered and docketed as a judgment 391
frauds 392
action to set aside the final order or judgment or to recover property 392
registration of title 393
certificate of title 394
title book 395
duplicate certificate of title 396
owner's receipt for certificate of title 397
certificate to include dealings pending registration 398
certificate of title as evidence 399
rights of owners of registered property 400
exceptions 400
incumbrances and transfers to be filed 400

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TITLE, REGISTRATION OF.—(Continued). SECTION
registered property not affected by prescription or adverse possession 401
fraud 402
notice only by registration 402
memorial to be carried forward 403
registered property to remain registered 404
registered property subject to same rights and burdens as unregistered property 405
transfers of registered property 406
certificate as to part of property remaining after transfer 407
book of covenants, restrictions, trusts and forms 408
filing, entering and indexing papers 409
tickler certificate 409
notice of filed papers 410
addresses of interested parties 411
notice 411
when a transfer is deemed to be registered 412
new certificates of title 413
loss of owner's duplicate 414
mortgages, leases and other liens and charges 415
may be registered 415
proceedings to register mortgage, lease or other lien or charge . . . 416
judgments, decrees, attachments and other liens to be noted on certificate 417
assignment of mortgage, lease, or other lien or charge 418
release, discharge or surrender of charge or incumbrance 419
enforcement of mortgages, charges, liens and incumbrances 420
registration under judicial sales 420a
powers of attorney to be filed and registered 421
reference of doubtful matters to the court 422
death of owner of registered property 423
transfer of property 423
certificate of title during settlement of estate 424
title derived through execution of a power in a will 425
assurance fund 426
compensation from assurance fund 427
action against assurance fund 428
restrictions on claims against assurance fund 429
penalties for fraudulent acts or false certificates 430
forgery and fraudulent stamping 431
penalty 431
fees to be charged 432
construction of article 433
form for examiner's report of title 434
form for certificate of title 435
TORRENS SYSTEM OF TITLE REGISTRATION: *See Title, Registration of.*
TRANSFERS:
of interest in decendent's estates 274
TREES:
action for cutting or carrying off 533
treble damages 534
TRESPASSERS:
action against certain persons holding over 530
TRUSTEE: *See Trusts; Powers.*
power, execution of, on death of trustee 160
Supreme Court may be 111, 113

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SECTION

TRUSTEES.—(Continued).
proceeds of sale may be invested in stocks and bonds 116
procedure 116
of express trust takes entire estate 100
when may convey or exchange trust property 105
when may lease trust property 106
bond of 107
persons paying money to, protected 108
when estate of, ceases 109
estate does not descend 111
appointment of by court 111
notice to beneficiary 111
resignation or removal of 112
commission of 117

TRUSTS: *See Accumulations; Trustee.*
certain trusts abolished 91
when legal estate vests in trustee 92
passive, trustees not to take 93
constructive 94
grant to one, consideration paid by another 94
bona fide purchasers protected 95
express, may be created for what purposes 96
certain devises as powers 97
creditors may reach surplus 98
authorized, when valid as a power 99
estate of trustee 100, 101
interest remaining in grantor 102
what interest may be alienated 103
transferee of trust property protected 104
when trustee may convey 105
when trustee may lease 106
by order of Supreme Court 106
notice to beneficiary 107
disposition of proceeds 107
persons paying money to trustee protected 108
when estate of trustee ceases 109
for benefit of creditors, termination of 110
reverter of remaining estate 110
trust estate not to descend 111
unexecuted, vests in Supreme Court 111
trustee appointed by court 111
trustee, resignation or removal of 112
for charitable purposes 113
shall not fail because of indefiniteness of beneficiary 113
Supreme Court may be trustee 113
attorney-general may represent beneficiaries 113
certain educational and other charitable uses 114
conditions of creation of 114
time for which such may be authorized 114
trusts for care of cemetery lots, etc 114-a

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TRUSTS.—(Continued). SECTION
charitable uses (continued).
manner of 115
form for 115
right of grantor to alter, amend, etc..... 115
recording of 115
action on 115
USES: *See Trusts.*
executed, existing 90
UNDISPOSED PROFITS: *See Accumulations.*
UNKNOWN PERSONS:
compromise of controversies where interests affected..... 73
VESTED REMAINDER: *See Remainder.*
WARRANTY: *See Conveyances.*
WASTE:
action for:
who liable to action for waste..... 520
action for waste by heir, devisee, or grantor of reversion..... 521
action for waste by ward against guardian..... 522
action for waste by grantee of real property sold under execution. 523
judgment in action for waste against tenant of particular estate. 524
action for waste against joint tenant or tenant in common..... 525
interlocutory judgment for partition in action for waste..... 526
damages in action for waste to be deducted from defendant's share 527
view in action for waste..... 528
WIDOW:
quarantine of 204
WIRES:
telegraph or other electric, maintenance of no presumption of grant. 261

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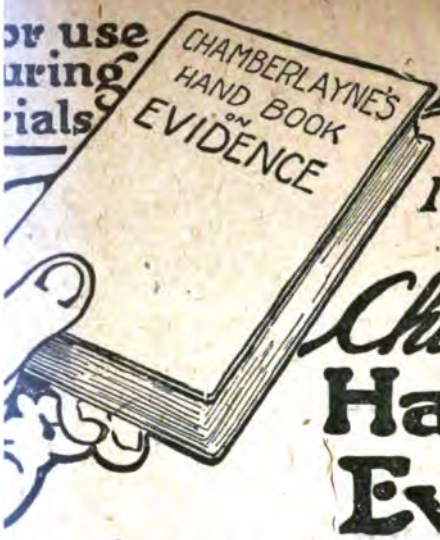

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